

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THOMAS M. KELLEY,
Plaintiff,

v.

Civil Action No. 05-10596-NMG

TOWN OF PLYMOUTH, et al
Defendants.

**PLAINTIFF, THOMAS M. KELLEY'S,
OPPOSITION TO DEFENDANTS'
MOTION TO STRIKE AFFIDAVITS OF
THOMAS M. KELLEY AND DENNIS M. GOVONI**

**I. DEFENDANTS' MOTION TO STRIKE THE KELLEY AFFIDAVIT
SHOULD BE DENIED.**

Kelley's Affidavit reflects both his Complaint, which was verified and included in his Opposition to Summary Judgment, as well as his Deposition testimony, which supports his entire Affidavit, and is annexed hereto as supportive material, and submits the transcripts of the first 2 sessions of 3 total sessions of his deposition, attached hereto as Exhibit A. His testimony and exhibits thereto when taken in their entirety supports his entire Affidavit. One must remember that the Plaintiff served as a former union official, served and continues to do so as a Plymouth Town Meeting member and a member and former Chairman of the Plymouth Retirement Board. Therefore his statements are not conclusions or arguments, but facts upon his personal knowledge to information as an aforesaid municipal officer, which allowed him to be privy to such information personally. In addition, the Commonwealth of Massachusetts Regulation 840 CMR 15.03, annexed to Plaintiff's Rebuttal to Defendants' Reply to Plaintiff's Opposition clearly indicates that Chief Pomeroy was in violation of State Regulations. Regardless,

the Plaintiff to be subject Chapter 149 § 185 only had to demonstrate that he had a reasonable belief of wrong doing on the part of the Defendants, which was more than evident by virtue of the actions of Defendants by the misappropriation of funds to which Pomeroy was not legally entitled.

The Plaintiff requests that the Motion to Strike his Affidavit be denied and his supplemental submission of his deposition transcripts be accepted in support of his Affidavit.

II. DEFENDANTS' MOTION TO STRIKE THE GOVONI AFFIDAVIT SHOULD BE DENIED.

The Defendants specifically mention Officer Dennis Govoni and Sergeant John Abbott as officers who sought to be excused from the Columbine like Drill in their Motion for Summary Judgment in a fashion insinuating that they sought permission before Plaintiff Kelley was injured at his session of said training drill. In fact, the Plaintiff contends it was only after he was injured that anyone was excused for medical reasons from subsequent training sessions of the Columbine Drill. Sgt. Abbott is retired and lives out of state. At this time he was not available to support Plaintiff's contention.

However, Dennis Govoni also retired was available and his Affidavit completely contradicts the statements set forth by the Defendants regarding his ultimately not participating in the drill. He actually refused to participate in the drill after Kelley was injured as stated in his Affidavit.

Further, the Defendants introduced Govoni as an example of excusing officers who asked to be excluded from the Columbine training session. He was mentioned in the Depositions of Chief Pomeroy and Captain Botieri.

The Defendants reintroduced Officer Govoni in their Memorandum in Support of their Motion for Summary Judgment. Both the Plaintiff and Defendants listed Dennis Govoni in their Fed. R. Civ. P. 26(a) (1) (A) Voluntary Disclosure Statement as an individual likely to have discoverable information in paragraph number 41 in said statements. As of May 13, 2005, the Defendants had ample opportunity to depose Mr. Govoni and chose not to depose him.

After characterizing Govoni's exclusion from the Columbine training in a manner to support their misconceived contentions set forth in their Memorandum for Summary Judgment, a rebuttal affidavit cannot be prohibited from consideration by the Court. The Defendants opened the door by setting forth their contention based upon hearsay and their own self-serving interpretation of events. The Plaintiff has a right to respond with primary contradictory evidence pursuant to Fed. R. Civ. Proc. 56.1, which specifically requires and authorizes the opposing party to summary judgment to produce affidavits to support the non-moving party's contentions why summary judgment should be denied.

The Plaintiff is well within his procedural rights to present Govoni's Affidavit. The Defendants raised the issue by misrepresenting Govoni's actions and therefore his affidavit is admissible.

As for the typographical error in paragraph 4, the words "you were" are corrected to "I was" in the Confirmatory Affidavit, Exhibit B annexed hereto and made a part hereof.

The content of the Affidavit and its context are clear and cannot be ignored by the Court in view of the misrepresentation of Govoni's activities relating to the training session proffered by the Defendants.

The Plaintiff respectfully requests this Court deny the Defendants' Motion to Strike the Affidavits of Thomas Kelley and Dennis Govoni.

Respectfully submitted,

Thomas M. Kelley, the Plaintiff,
by his attorneys,

/s/ Joseph R. Gallitano
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Dated: November 15, 2007

EXHIBIT A

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Volume I
Pages 1-159UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
C.A. NO. 05 10596 NMG

THOMAS KELLEY, :
Plaintiff, :
vs. :
TOWN OF PLYMOUTH, et al, :
Defendant. :

DEPOSITION of THOMAS KELLEY, taken on behalf of the Defendants, pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before Barbara M. Montijo, a Registered Professional Reporter and Notary Public within and for the Commonwealth of Massachusetts, at the offices of Brody, Hardoon, Perkins & Kesten, One Exeter Plaza, Boston, Massachusetts, on February 9, 2006, commencing at 11:00 a.m.

DUNN & GOUDREAU
COURT REPORTING SERVICE, INC.
One State Street
Boston, MA 02109
(617) 742-6900

FEBRUARY 9, 2006

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 22
 23
 24

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1 (DEPOSITION COMMENCED AT 10:55 A.M.)
 2 MR. SILVERFINE: All motions, except as to
 3 form, are reserved until trial.
 4 MR. ARMSTRONG: Objections. All
 5 objections, right.
 6 MR. SILVERFINE: Just tell me which -- I'm
 7 only dealing with one counsel.
 8 MR. GALLITANO: Mr. Armstrong is going to
 9 be lead today.
 10 MR. SILVERFINE: That's fine. As you guys
 11 both know, it's not a tag team.
 12 MR. GALLITANO: No, it isn't.
 13 MR. ARMSTRONG: We're going to read and
 14 sign.
 15 MR. SILVERFINE: Do you want a notary?
 16 MR. ARMSTRONG: No. We don't need to do
 17 that. We'll waive the notary.
 18 THOMAS KELLEY
 19 The deponent, having been satisfactorily
 20 identified and duly sworn by the Notary Public,
 21 deposes and testifies as follows:
 22 EXAMINATION BY MR. SILVERFINE
 23 Q. Mr. Kelley, good morning. My name is Jeremy
 24 Silverfine. I'll be taking your deposition today.

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1 And essentially, as you saw the other day at the
 2 other depositions, you're obligated to answer my
 3 questions. If there's any time you need to talk to
 4 your attorney, certainly let me know, and I'll allow
 5 you and your counsel to step out and confer. If you
 6 don't understand something, you have to let me know.
 7 Anytime you need a break, to use the men's room, for
 8 whatever reason, also please let me know.
 9 At the end of this deposition, the stenographer
 10 will make a transcript. You'll have an opportunity
 11 to read it and make any corrections you feel are
 12 necessary and return them through your counsel. Have
 13 you understood everything so far?
 14 A. Yes.
 15 Q. The only other thing is, if you would just allow me
 16 to finish my question, and likewise, hopefully, I'll
 17 allow you to finish your answer. The stenographer
 18 can only take down one person at a time; that way the
 19 record will be clean. All right, why don't we start
 20 off with -- why don't you give us your full name?
 21 A. My name is Thomas Kelley, 41 Arlington Road.
 22 Q. I'm sorry, say it again?
 23 A. 41 Arlington Road.
 24 Q. 41 Arlington Road?

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- 1 A. Uh-huh. Plymouth, Mass.
- 2 Q. Who do you live there with?
- 3 A. I live there with my wife.
- 4 Q. What's her name?
- 5 A. Judith.
- 6 Q. Anyone else?
- 7 A. My two children. Colleen and Bridget.
- 8 Q. How old are they?
- 9 A. Colleen's 20 and Bridget's 19.
- 10 Q. Is your wife employed?
- 11 A. Yes.
- 12 Q. What is her occupation?
- 13 A. She's a schoolteacher with the Town of Abington.
- 14 Q. How long has she been a schoolteacher?
- 15 A. Thirty years. Just going on thirty years.
- 16 Q. Now, what is your Social Security number?
- 17 A. 032-46-7939.
- 18 Q. Your date of birth?
- 19 A. 10/26/54.
- 20 Q. Are you currently employed?
- 21 A. No, I'm not.
- 22 Q. You're retired?
- 23 A. I'm retired.
- 24 Q. And you're retired from the Town of Plymouth Police

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- 1 Q. Anything further after Northeastern?
- 2 A. Nothing other than in-service training, which would
- 3 have been through the, I believe, Bristol Community
- 4 Police Academy down in Fall River.
- 5 Q. That was part of your police training?
- 6 A. Correct.
- 7 Q. Any other formal education?
- 8 A. I'm presently -- I have a designation of Chartered
- 9 Pension Professional.
- 10 Q. I'm sorry, Chartered?
- 11 A. Chartered Pension Professional.
- 12 Q. What is that?
- 13 A. It's a professional designation in regards to
- 14 retirement benefits, how systems are put together,
- 15 that type of thing, from Boston University.
- 16 Q. And you went to school for that?
- 17 A. I went to school there. They had a program, a
- 18 certificate program.
- 19 Q. How long a program was that?
- 20 A. It was a two-year program and you got the designation
- 21 after the second exam.
- 22 Q. In what year did you receive your certification?
- 23 A. I don't have it right off the top of my head. It
- 24 was in -- it's in my personnel file. You have a copy

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- 1 Department?
- 2 A. That's correct.
- 3 Q. How many years did you serve?
- 4 A. I started in September of 1977 and I retired
- 5 September 9th, 2003.
- 6 Q. I'm going to ask you some background questions first,
- 7 before we get into some of the details of your
- 8 complaint and other information. So, if you could
- 9 bear with me, I'll try to get through that first.
- 10 First of all, could you tell us a little bit about
- 11 your educational background? Where did you go to
- 12 high school?
- 13 A. I went to Catholic Memorial High School in West
- 14 Roxbury.
- 15 Q. What year did you graduate?
- 16 A. 1973.
- 17 Q. Did you continue to further your education?
- 18 A. Yes, I did.
- 19 Q. What was next?
- 20 A. I went to Northeastern University and I graduated in
- 21 1977.
- 22 Q. What kind of degree did you get?
- 23 A. I have a Bachelor of Science degree in Criminal
- 24 Justice.

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- 1 of it. It's in there as a designation.
- 2 Q. Best memory?
- 3 A. At least five years ago.
- 4 Q. So, around 2000, 2001, roughly?
- 5 A. In that area, I would say.
- 6 Q. Any other educational certificates?
- 7 A. I'm certified in State regulations from the
- 8 Commonwealth of Massachusetts from PAREC and the
- 9 State retirement regulations.
- 10 Q. Anything else?
- 11 A. That's it.
- 12 Q. Let's talk a little bit about your work background.
- 13 When you got out of Northeastern, was your first job
- 14 with the Plymouth Police Department?
- 15 A. I worked there as an intermittent.
- 16 Q. Starting in September?
- 17 A. September.
- 18 Q. Was that your first full-time job?
- 19 A. I worked at Boston College as campus police as well.
- 20 I worked two jobs.
- 21 Q. When were you working at Boston College?
- 22 A. At the same time I was working for the Town.
- 23 Q. September of '77?
- 24 A. Correct.

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- 1 Q. How long did you stay at Boston College?
- 2 A. I was there nine months, almost a year. I then
- 3 started working down at the power plant for Edison --
- 4 Q. The power plant?
- 5 A. -- as security.
- 6 Q. Where is that?
- 7 A. In Plymouth.
- 8 Q. What did you do for the power plant?
- 9 A. Security.
- 10 Q. How long did you remain with them?
- 11 A. I remained there until I was appointed a full-time
- 12 permanent officer in 1980.
- 13 Q. So, approximately 1977 through 1980?
- 14 A. No, it would have been like '79, '79 to '80. About a
- 15 year in each job.
- 16 Q. So, you worked for a year at Boston College, a year
- 17 at the power plant?
- 18 A. Correct.
- 19 Q. And then, were you working as intermittent as well
- 20 during this period time?
- 21 A. Same time, yes.
- 22 Q. And you went on full time in 1980?
- 23 A. Correct.
- 24 Q. And you remained full time until your retirement?

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- 1 A. That's correct.
- 2 Q. And any other employment between 1980 until your
- 3 retirement?
- 4 A. No.
- 5 Q. Now, during your years as a police officer, you
- 6 started off as a patrol officer?
- 7 A. That's correct.
- 8 Q. Did that position change at all during your years as
- 9 a police officer?
- 10 A. No.
- 11 Q. You retired as a patrol officer?
- 12 A. That is correct.
- 13 Q. Did your shifts change during the years you were
- 14 there?
- 15 A. When I first started, because of my seniority, I was
- 16 on midnights. Then, I went -- as the seniority
- 17 changed, I went from 5 to 1, 4 to 12, and then 8
- 18 to 4.
- 19 Q. You retired when you were doing 8 to 4?
- 20 A. That's correct.
- 21 Q. How long were you on 8 to 4, do you remember?
- 22 A. I'd say almost ten years.
- 23 Q. Now, during your career as an officer for Plymouth,
- 24 had you ever been reprimanded or complained about?

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- 1 A. I've never been suspended. Anything to do with civil
- 2 service, I'm sure that there were some complaints
- 3 that I was aware of that were handled by the Town at
- 4 the time and found to have no basis.
- 5 Q. Let's talk first about internal reprimands or
- 6 complaints. Do you recall any internal reprimands or
- 7 complaints that you received during your career?
- 8 When I say "internal," inside the Department, either
- 9 from a supervisor or fellow officer.
- 10 A. There was -- I remember myself and Mr. Abbott had an
- 11 argument and I received a letter involving that.
- 12 Q. When was that?
- 13 A. It has to be -- I think '93, maybe.
- 14 Q. Who is Mr. Abbott?
- 15 A. He was a Sergeant -- no, he was a patrolman at the
- 16 time. John Abbott.
- 17 Q. What was his complaint?
- 18 A. Well, we had an argument about an issue. I'm trying
- 19 to think of what the issue was about. It was about
- 20 something in the Town and that was probably the end
- 21 of it.
- 22 Q. Any other internal reprimands or complaints against
- 23 you that you're aware of?
- 24 A. Other than going through the discovery information

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- 1 there, there were some complaints that were handled
- 2 by the Department, that was probably 15 years ago.
- 3 Q. Were they internal or external complaints about
- 4 you?
- 5 A. They were external ones.
- 6 Q. So people, citizens complaining about you?
- 7 A. Correct.
- 8 Q. And that, you say, is the first time you heard of
- 9 it?
- 10 A. No. I mean, you're going back 15 years. When I
- 11 reviewed the information that we had in the
- 12 proceedings here, I looked at the complaints and I
- 13 have the -- I looked over the reports that I have as
- 14 well as the investigation Captain O'Meara did on
- 15 those, and they were found to have no merit.
- 16 Q. Besides those complaints, were there any other
- 17 internal complaints, either from a fellow officer
- 18 or supervisor, other than the one you mentioned with
- 19 Mr. Abbott?
- 20 A. Well, by "a complaint," I mean, as in a supervisor,
- 21 or anybody? If there's an issue -- explain what you
- 22 mean by "a complaint."
- 23 Q. A complaint that led to a letter, a reprimand, a
- 24 suspension, dock in pay, an extra day's work,

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- 1 anything of that sort.
- 2 A. There was an issue that was brought up by -- way back
- 3 with Chief Nagle, which I saw in the file that you
- 4 have there, and that was resolved. That was supposed
- 5 to be actually expunged from the file when Chief
- 6 Nagle was fired for stealing the test and indicted.
- 7 I guess it wasn't because it was there.
- 8 Q. What was the complaint against you by the Chief at
- 9 that point?
- 10 A. Oh, it had to do with some activity with vehicles.
- 11 Q. When you say "activity with vehicles," involving
- 12 what?
- 13 A. The odometers.
- 14 Q. Were you accused of playing with the odometers?
- 15 A. I was. That's true.
- 16 Q. What happened?
- 17 A. There was an investigation on it. I have a copy of
- 18 that at home. It was an ongoing practice in the
- 19 Department by numerous officers. I was asked about
- 20 it and I took my responsibility on the issue.
- 21 Q. Just so I'm -- when did this take place?
- 22 A. Oh, I want to say back in the early '80s.
- 23 Q. When you say there was a practice, are you saying,
- 24 you, along with several other officers, were playing

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- 1 around the odometer?
- 2 A. It was just adjusting the numbers, that's all.
- 3 Q. What advantage -- you just didn't do it for the heck
- 4 of it. What advantage did you gain by changing the
- 5 odometer? Did you add numbers or did you subtract
- 6 numbers?
- 7 A. Adding numbers at times, things like that.
- 8 Q. So, is it fair to say that you would do more patrol
- 9 than -- or substantiate the patrol you were supposed
- 10 to be on; is that fair to say?
- 11 A. I believe there was a standing order from the Chief
- 12 that cars -- people had to put a hundred miles on
- 13 them.
- 14 Q. Per week or per day?
- 15 A. Per day, per eight-hour shift.
- 16 Q. And so certain people weren't making them?
- 17 A. You just couldn't do it and it was a foolish practice
- 18 done by a group of officers. It was resolved and I
- 19 took my responsibility for it.
- 20 Q. So, you and other officers admitted to playing with
- 21 the odometer to meet the hundred-mile-a-day standard
- 22 set; fair to say?
- 23 A. That would be fair to say.
- 24 Q. What kind of punishment did you get back in the '80s?

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- 1 with the odometers?
- 2 A. The report that I have from Captain Murphy, who was
- 3 the Captain at the time, indicated in his report that
- 4 there were several other officers involved in this
- 5 matter.
- 6 Q. But I'm asking about -- I'm not asking about other
- 7 officers right now. I'm asking about you. What was
- 8 your role in this?
- 9 A. The dashboards were falling apart in the cars, so you
- 10 could adjust the mileage on the vehicle.
- 11 Q. This is the cruiser or your personal vehicle?
- 12 A. The cruiser.
- 13 Q. Did you say you along with other officers did this?
- 14 A. I can only speak for myself.
- 15 Q. That's fine. You did this, played with the odometer?
- 16 A. A couple of times. That's correct.
- 17 Q. Just explain it to me, because I'm not understanding
- 18 what advantage that had to you. What would be the
- 19 advantage to change the odometer?
- 20 A. It was a foolish practice that went on in the
- 21 Department. It had no advantage.
- 22 Q. For what purpose -- in other words, I'm in a cruiser,
- 23 I'm driving around, I'm doing my job. What advantage
- 24 was there to any officer, including you, to mess

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- 1 A. I did one shift of extra duty.
- 2 Q. Anything else that you can recall in terms of
- 3 reprimands, suspensions, dock in pay, extra shifts
- 4 that you recall during your career?
- 5 A. No. I can't recall anything that I know of.
- 6 Q. So, that's the -- what you've just told us is the
- 7 only one that you can recall of the events you can
- 8 recall?
- 9 A. That's correct.
- 10 Q. And in terms of external complaints; in other words,
- 11 citizens complaints, besides the one you said you
- 12 just saw in the file, anything else you can recall?
- 13 A. No, I really can't. I mean, you're going back almost
- 14 30 years. I know that there's a specific State law
- 15 that requires any citizen complaint, whether how big
- 16 or how small, be investigated by the Department, and
- 17 I know they were. And if there were any complaints,
- 18 Captain O'Meara would have addressed them. And I
- 19 remember getting letters back from him stating that
- 20 they were without merit, some of the ones that I can
- 21 -- that were there. Some of them were related to
- 22 arrests, people were arrested and might not have been
- 23 too happy.
- 24 Q. Have you ever been sued in your capacity as a police

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1 officer?
 2 A. Yes, I was.
 3 Q. Can you tell me the name of that case?
 4 A. That was a case in 19 -- I don't know the exact
 5 year. It was involving then Sergeant Botieri, I
 6 think, Darrell Furtado, and a number of other
 7 officers. The individual's name was Kapolis.
 8 Q. Could you spell that for us?
 9 A. I don't know how to spell Kapolis.
 10 Q. Just the best you can.
 11 A. C -- K-A-P-O-L-I-S.
 12 Q. What court were you sued in?
 13 A. It never went to court. I just remember we took a
 14 deposition once. I just went to a deposition once in
 15 Malden.
 16 Q. I mean, in order to get to a deposition, there had to
 17 be an action. Do you remember where that action was
 18 filed?
 19 A. Federal Court. I couldn't tell you. Federal, I
 20 guess. I don't know.
 21 Q. And you had your deposition taken in that case?
 22 A. I had a deposition taken in Malden with officer --
 23 with, at the time, Sergeant Botieri.
 24 Q. Do you remember the attorney who took your

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1 deposition?
 2 A. No, I don't. I know his office was right in Malden
 3 Square. It began with an "L."
 4 Q. What happened to the case itself?
 5 A. The case was ultimately settled with a stipulation.
 6 I remember specifically seeing that in the record,
 7 that the incident happened between 1 and 3 in the
 8 morning. The Town stipulated that the incident
 9 happened at that time and I went home at 12:00. I
 10 was working 4 to 12; and that was the end of it.
 11 Q. Do you remember just what was the underlying
 12 allegation that Mr. Kapolis made against you and the
 13 other officers?
 14 A. He indicated that he was arrested by Sergeant Botieri
 15 and he indicated that he had been assaulted.
 16 Q. Excessive force type of thing?
 17 A. Excessive force type of thing.
 18 Q. Do you remember what year this was, roughly?
 19 A. It would have been the time -- Sergeant Botieri was a
 20 Sergeant at the time. Captain Botieri was a Sergeant
 21 at the time. He had to -- he was working 4 to 12 and
 22 he was working a double that night. It was an
 23 overnight. The Sergeant sometimes took over the desk
 24 when the Lieutenant went out. So, I don't know

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1 whether he was in charge of the station at the time.
 2 I would believe -- I would gander to guess it would
 3 have to be between '88 and '90, I would say.
 4 Q. Any other suits that you were involved with as an
 5 officer?
 6 A. No.
 7 Q. How about as a civilian, any other suits you've been
 8 involved with?
 9 A. No.
 10 Q. Any other depositions that you have given under
 11 oath?
 12 A. No.
 13 Q. I'm going to be jumping around a little bit, but
 14 I'll try to direct you with the questions, so there's
 15 no confusion. If I confuse you, it's inadvertent.
 16 So, please, let me know and I'll rephrase the
 17 question. What I'm going to do is I'm going to go
 18 through some of the *paragraphs* in your complaint,
 19 some of your Answers to Interrogatories, and some
 20 other things and ask you questions about them so we
 21 can discover information about them. Okay?
 22 A. Sure.
 23 MR. SILVERFINE: Let's mark your verified
 24 complaint as Exhibit 1. I'm sure you have a copy,

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1 but I'll give you a copy anyway.
 2 (EXHIBIT 1 MARKED FOR IDENTIFICATION)
 3 Q. I'm now showing you what's been marked as Exhibit 1
 4 and I'm placing it before you. And just for purposes
 5 of identification, I'll ask you, do you recognize
 6 that complaint and your signature verifying the
 7 complaint? I think it's four pages from the back.
 8 A. (Witness perusing document) Yes, I do.
 9 MR. ARMSTRONG: Off the record for a
 10 moment.
 11 (OFF THE RECORD)
 12 MR. SILVERFINE: Back on the record.
 13 Q. Mr. Kelley, I'm going to ask you some questions about
 14 your verified complaint, which is now Exhibit 1.
 15 Okay?
 16 A. Yes.
 17 Q. On page 2, paragraph 6, you said that on May 25th,
 18 2003, Chief Pomeroy ordered members of the Plymouth
 19 Police Department to participate in this drill. Can
 20 you tell us, were all of the officers of the Plymouth
 21 Police Department required to participate in this
 22 drill?
 23 A. As far as I know, when there's a standard order by
 24 the Department, rules and regulations require you to

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1 go. And I believe everybody, to my knowledge, went.
 2 Q. So, it's fair to say that all the officers were
 3 required to attend this, correct?
 4 A. If it's a written order like that, yes, they are or
 5 they're subject to discipline if they don't.
 6 Q. In paragraph 8 you mention that there had been a
 7 substantial record of your physical impairment.
 8 First of all, what was the physical impairment, the
 9 substantial record of your physical impairment that
 10 you're talking about?
 11 A. Before that event, every year, on a regular basis, as
 12 part of the contract or agreement, everybody in the
 13 Department would get a letter indicating what their
 14 sick time was for the previous year.
 15 At that time in the letter, it's a standard
 16 letter, it says if you have any -- they give you the
 17 amount of sick days that you used in the previous
 18 year. They then turn around --
 19 And it says if you have any circumstances,
 20 doctor's notes, various things that would
 21 substantiate this, so it's not an abuse issue, that
 22 you have bona fide reasons for being sick, you could
 23 bring them in; and then they would look at them and
 24 retract the letter, okay. And that's written in the

Page 23

1 contract.
 2 At that point, I received the annual letter. I
 3 produced two doctor's notes for Lyme disease, that I
 4 was taking medication for, and I was being treated
 5 for Meniere's disease. I gave those two doctor's
 6 notes in hand to Captain Botieri.
 7 Q. And when did you do that?
 8 A. I don't have the exact dates, but I did it right
 9 after I got the letter.
 10 Q. Well, give me an approximate date of when you
 11 received the letter?
 12 A. It was before the May 25th event, I can say that.
 13 Q. As far as in advance of the May 25th event --
 14 A. I can't remember exactly when they come out. I know
 15 they come out at some point on an annual basis,
 16 that's about the best I can recall.
 17 Q. The Lyme disease, first of all, how long had you been
 18 suffering from Lyme disease?
 19 A. I have no idea.
 20 Q. When did you find out you had Lyme disease?
 21 A. I went to my primary care doctor, Dr. Moore, and he
 22 got me an appointment with Dr. Molloy. We did a
 23 blood test and we discovered that there was, I guess,
 24 indications of Lyme disease.

Page 24

1 Q. So, when did you become aware that you had
 2 contracted Lyme disease?
 3 A. I don't have the doctor's notes in front of me, but
 4 if I had them, I could give you an exact date.
 5 Q. You said here you had already contracted Lyme
 6 disease. So, give me your best.
 7 A. I don't know. I mean, you can have Lyme disease for
 8 many years and not even know it.
 9 Q. I understand. I'm asking you when you became aware
 10 that you say you contracted Lyme disease?
 11 A. Like I said, I don't have the records, but it was
 12 around the time when I got that letter and I
 13 substantiated the two of them.
 14 Q. You were treating with Dr. Moore?
 15 A. Dr. Moore is my primary physician.
 16 Q. Anyone else for Lyme disease?
 17 A. That would be it. Dr. Molloy, he's a specialist in
 18 that.
 19 Q. Do you recall when you saw Dr. Molloy prior to
 20 May 25th, 2003?
 21 A. I think it was like maybe a couple of months before
 22 that.
 23 Q. What was the effect on you from Lyme disease?
 24 A. Well, I started to feel -- I was -- I had aches,

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1 pains, just generally lethargic. I just wasn't
 2 right. I just didn't feel right and every joint in
 3 my body ached, my shoulders. I was in constant pain
 4 from various things. It was like a flu feeling that
 5 you had all the time, but you didn't have the flu.
 6 Q. How were you being treated for the Lyme disease?
 7 A. At the time I was on antibiotics.
 8 Q. Do you remember what kind of antibiotics?
 9 A. I don't know.
 10 Q. Do you remember when you received the antibiotics?
 11 A. I used to take them every day.
 12 Q. And you were taking it prior to May 25th, 2003?
 13 A. I believe so, yes.
 14 Q. Did that abate the effects of Lyme disease?
 15 A. My understanding of Lyme disease is it's always in
 16 your body.
 17 Q. Right, but I'm asking you -- I understand it's in the
 18 body. Did that abate the feeling that you said you
 19 were effected by Lyme disease?
 20 A. I don't think it totally took it away. It would come
 21 and go, back and forth type of thing. And I kept up
 22 the medication.
 23 Q. What is Meniere's disease, M-E-N-I-E-R-E-S?
 24 A. Meniere's disease.

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- 1 Q. What is that?
- 2 A. Meniere's disease is the inner ear. It affects your
- 3 stability and it affects your -- like the brain waves
- 4 in your head is the way I understand it.
- 5 Q. How long have you been suffering from Meniere's
- 6 disease?
- 7 A. I think about three years now.
- 8 Q. Three years now or three years back then?
- 9 A. From now probably -- oh, you're talking back then?
- 10 I'm retired now. I'd say at least five years.
- 11 Q. So, at least two years prior to May 25th, 2003?
- 12 A. About a year. I'd say about a year, year and a half
- 13 at that point. I went to Dr. Durante for that.
- 14 Q. Where is Dr. Durante's office?
- 15 A. He's in Plymouth.
- 16 Q. What did Dr. Durante do for you in terms of Meniere's
- 17 disease?
- 18 A. He put me on a diuretic and I also take another pill
- 19 from a neurologist related to that.
- 20 Q. What doctor is that?
- 21 A. That is Dr. -- a neurologist, Childress.
- 22 Q. Spell it?
- 23 A. Childress. C-H-I-L-D -- Childress.
- 24 Q. C-H-I-L-D-R-E-S-S?

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- 1 A. Correct.
- 2 Q. Where is Dr. Childress located?
- 3 A. He's located in Duxbury.
- 4 Q. Pursuant to that, have you, in your Answers to
- 5 Interrogatories, and we'll get to that in a second,
- 6 have you given us the names and addresses of all the
- 7 doctors and medical facilities that you've been
- 8 treating for both Lyme disease and Meniere's disease?
- 9 A. I believe they're in my retirement file that the
- 10 Town would have had access to. I believe that's how
- 11 we answered the question.
- 12 Q. Try my question first. My question is: Did you
- 13 answer that in your interrogatories?
- 14 MR. SILVERFINE: And just give me a
- 15 second, we'll mark that as Exhibit 2.
- 16 (EXHIBIT 2 MARKED FOR IDENTIFICATION)
- 17 Q. Let me ask you this: Are in fact those your Answers
- 18 to Interrogatories with your signature on the last
- 19 page?
- 20 A. (Witness perusing document) What's the question?
- 21 Q. Are those your Answers to Interrogatories I've just
- 22 placed before you, Exhibit 2?
- 23 A. Yes, that's my signature.
- 24 Q. And your signature is on the last page, right?

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- 1 A. Yes, correct.
- 2 Q. In Exhibit 2 have you given us all the -- listed all
- 3 the medical providers and facilities that you've
- 4 treated with as requested?
- 5 A. Do you know exactly which one?
- 6 Q. I believe it's Interrogatory Number 16 asks you to
- 7 provide us with all the medical providers and to list
- 8 their addresses and phone numbers. I just want to
- 9 make sure that's a complete list. Do you see your
- 10 answer there in the middle of the page?
- 11 A. (Witness perusing document) I believe there was one
- 12 -- let me see. Childress isn't there. No, I believe
- 13 I left out Dr. Childress.
- 14 Q. What's Dr. Childress' first name?
- 15 A. I can't think of his first name. I can't think of
- 16 his first name.
- 17 Q. And his office is where, I'm sorry?
- 18 A. On Tremont Street in Duxbury.
- 19 Q. Anyone else that you can think of that you haven't
- 20 listed in your Answer to --
- 21 A. No, everybody is there.
- 22 Q. So, besides Dr. Childress, this is a complete list?
- 23 A. Correct.
- 24 Q. No other medical facility?

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- 1 A. No.
- 2 Q. And any other medications other than the ones you've
- 3 just described for us that you're on?
- 4 A. I have medicine for my heart.
- 5 Q. What other medications are you on?
- 6 A. Can I read them off to you? (Witness perusing
- 7 document) For my heart I'm on Metoprolol.
- 8 Q. Can you spell that for the stenographer?
- 9 (WITNESS HANDS DOCUMENT TO ATTORNEY SILVERFINE)
- 10 Q. M-E-T-O-P-R-O-L-O-L?
- 11 A. Uh-huh.
- 12 Q. And what does that do?
- 13 A. I believe the first two are for blood pressure.
- 14 Q. Let's just take them one at a time.
- 15 A. I don't know exactly what it does. I'm not a doctor,
- 16 but I know I have to take those in combination of
- 17 each other.
- 18 Q. How often do you take Metoprolol?
- 19 A. Every day.
- 20 Q. Once a day?
- 21 A. One once a day.
- 22 Q. And that's for -- I'm sorry, you take that for
- 23 what?
- 24 A. My heart.

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- 1 Q. What does it do, do you know?
2 A. I don't know what it does exactly, but I know that
3 I'm required to take it.
4 Q. Dr. Childress prescribed this?
5 A. No.
6 Q. Who prescribed this?
7 A. Dr. Moore. He's a cardiologist.
8 Q. The second one you listed, I'll spell it.
9 L-I-S-I-N-O-P-R-I-L.
10 A. Lisinopril.
11 Q. Who prescribed that?
12 A. Dr. Moore.
13 Q. What is that for?
14 A. That's heart related, too.
15 Q. Do you know specifically what that is?
16 A. I couldn't tell you.
17 Q. Lipitor is listed as three, who prescribed that?
18 A. Dr. Moore.
19 Q. What does Lipitor do?
20 A. Lipitor, I believe, is for cholesterol.
21 Q. The fourth one is -- I can't read your handwriting.
22 A. Plavix.
23 Q. P-L-A-V-I-X?
24 A. Right.

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- 1 Q. Who prescribed that?
2 A. Dr. Moore.
3 Q. What is that?
4 A. Blood thinner.
5 Q. The next is Lexapro?
6 A. Lexapro.
7 Q. L-E-X-A-P-R-O?
8 A. Right.
9 Q. Who prescribed that?
10 A. Dr. Moore.
11 Q. What's that for?
12 A. I believe that keeps your blood pressure down or
13 something to that effect.
14 Q. And the last one listed here is Nortriptyline,
15 N-O-R-T-R-I-P-T-Y-L-I-N-E?
16 A. Right.
17 Q. And who prescribed that?
18 A. Dr. Childress.
19 Q. And what does that do?
20 A. With all the complications of the different things, I
21 started to get these tremendous -- when I get these
22 dizzy spells from the Meniere's, I would get these --
23 what do you call them? -- migraine headaches. I'd
24 get ringing in my ear when I get these attacks, like

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- 1 a zing, you get these zinging sounds in your head
2 like you're going to pass out; and that mitigates
3 that.
4 Q. These six prescription drugs which you've listed, are
5 these all prescriptions you've gotten since May 25th,
6 2003, or were you on some of them prior to May --
7 A. No, I was not on anything.
8 Q. Well, you said you were on medication for --
9 A. Right, I was on that.
10 Q. Well, you said you were on at least two of the
11 medications, right?
12 A. Right, that's for the Lyme disease. You know, it was
13 a -- what do you call it? An antibiotic.
14 Q. Do you still take the medication for Lyme disease?
15 A. No, not now.
16 Q. When did you cease taking that?
17 A. Probably sometime after that because of all the other
18 pills I was taking.
19 Q. Do you remember when?
20 A. I couldn't tell you.
21 Q. You say after May 25th, 2003 you ceased taking the
22 Lyme disease medication?
23 A. Correct.
24 Q. How about the Meniere's disease?

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- 1 A. Meniere's, I was taking a diuretic, which I have
2 recently stopped, because it was interacting with my
3 heart pill.
4 Q. You were taking that prior to May 25th, 2003. When
5 did you stop taking that?
6 A. Just maybe six months ago.
7 Q. Is Meniere's affected by weight? Is that why you're
8 taking the diuretic?
9 A. No. Meniere's, they don't really have an answer for
10 that. You get a ringing in your ear, you lose
11 hearing. I don't really have a -- the doctor doesn't
12 have a -- they don't have a real solid way of knowing
13 how it comes about. You get the vertigo, you get the
14 headaches, you get ringing in your ear. You lose a
15 percentage of your hearing and it just goes and
16 comes. They don't have any real handle on it.
17 Q. Now, again, directing your attention to Exhibit 1,
18 paragraph 8, when you say you have a substantial
19 record of physical impairment prior to May 25th,
20 2003, were you out sick often prior to May 25th,
21 2003?
22 A. Yes. That's why I got the letter from the Chief,
23 that I had used sick time.
24 Q. How much sick time were you allowed back in your last

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1 year of the job?

2 A. Well, if I can explain how -- what we do is you're
3 given 15 days to a bank every year.

4 Q. 15 sick days?

5 A. 15 sick days. And in the contract it stipulates, I
6 don't know the exact numbers, but if you use over so
7 many, I think it's 15, and you're dipping into your
8 bank -- I had a reserve bank of -- I don't know how
9 many I had at the time, but I had a reserve bank.

10 By contract, they send you a letter -- they send
11 everybody a letter. If you use 2 sick days, that's
12 fine. If you use 23 or 21 -- I think I might have
13 used 22, you get a standard letter. It was the first
14 time I had ever submitted anything like this in my
15 career.

16 I got the doctor's notes indicating that. I
17 gave them to Captain Botieri. I notified the Chief
18 via e-mail that I gave him those doctor's notes at
19 that time.

20 Q. And so at least -- I'm talking up until May 25th,
21 2003, you had already used over 15 sick days
22 based on your Lyme disease and Meniere's disease?

23 A. I had used time before that, okay. And what
24 happened was -- like I said, I documented that it

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1 wasn't an abuse of sick time. I never had an abuse
2 of sick time letter given to me, but I documented the
3 Lyme disease and I went for treatments.

4 Q. Right. That's what I'm asking. In prior years, had
5 you used up your maximum sick days each and every
6 year?

7 A. No. No. You have a bank and you're given 15 every
8 year. It's just a number that they say every year
9 we'll give everybody. It's like a starting point and
10 they say you're using too much sick time.

11 Q. In the year before had you used at least 15 days?

12 A. No, I used less.

13 Q. Do you have a memory in the past five years, prior to
14 May 25th, 2003, of how many sick days you used per
15 year?

16 A. No. I couldn't do that for you.

17 Q. You have a recollection of being out, though, at
18 least based on your Lyme disease and Meniere's
19 disease?

20 A. I remember numerous times that I would come to work
21 not feeling right. I'd have dizzy spells and have to
22 go home. I'd notify the Lieutenant. I'd come in and
23 I'd say something's wrong and I'd have to go home.
24 In fact, I had Officer Hassan drive me home several

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1 times and I couldn't finish the shift. He'd drive me
2 home and someone would pick him up. I was so bad, I
3 couldn't drive my car.

4 Q. In paragraph 9 of Exhibit 1 you say Chief Pomeroy and
5 Plymouth, I'm assuming you mean the Town of Plymouth,
6 were well aware of your medical condition at the time
7 you were ordered to participate in the drill. Could
8 you explain to me what you mean by that and how you
9 believe they were well aware of your condition?

10 A. As I previously stated in my last answer, I e-mailed
11 the Chief. I informed him that I put the -- gave the
12 doctor's notes to Captain Botieri in hand. I
13 requested him to look at my sick time again and
14 relinquish the letter that I was given. All letters
15 and doctor's notes are placed in your personnel file
16 and are kept over at the Town Hall. So, they would
17 have had knowledge of that because they would have
18 had to place it in the file.

19 Q. Is someone required, as far as you know, to review
20 those records you submit?

21 A. I don't know the administrative process that handles
22 it once we give it to them.

23 Q. In other words, besides just submitting them and
24 putting them in your personnel file, is there

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1 somebody in Town, the Police Department, that's
2 required to look at each of those?

3 A. Yes.

4 Q. Who was that?

5 A. That would have been the Captain and the Chief.

6 Q. And you're saying Captain Botieri?

7 A. I handed him that letter and it's ultimately the
8 Chief's decision, because the letter you get annually
9 is signed by the Chief.

10 Q. What did these letters or notices state, that you
11 recall, to both Captain Botieri and Chief Pomeroy,
12 prior to May 25th, 2003 relative to your medical
13 condition at the time?

14 A. I believe the Lyme disease from Dr. Molloy stated
15 that I could be out as a result of Lyme disease
16 several times and I was under his care for it.

17 Dr. Durante stated basically the same thing;
18 that I was under his care for Meniere's disease. I
19 would get these attacks and sometimes you can't come
20 to work and sometimes you have them at work.

21 It's a known -- it's a documented illness, that
22 sometimes they come on at work, sometimes they're
23 symptoms of stress, in stressful situations.
24 Sometimes these things happen, they come on. And

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1 that was one of the problems, there were a number of
2 shifts I had to go home and have to be driven home
3 because I couldn't drive my car. I had to come into
4 the station and physically, people had to help me go
5 home.
6 Q. Paragraph number 11, the last line, you said you were
7 forced to accept a disability retirement. Do you see
8 that on page 3, at the top?
9 A. Yes.
10 Q. Are you saying you did not want to accept the
11 disability retirement?
12 A. Given the condition that I was in, there was no way I
13 could return to the job.
14 Q. Right, that's what my question is. In other words,
15 you would agree, even based on your complaint, as I
16 understand it, you're saying on May 25th, 2003 you
17 suffered some kind of cardiac incident; is that
18 right?
19 A. That's correct.
20 Q. So, you could not return to work as a full-time
21 officer; is that fair to say?
22 A. Unless I wanted to die on the job.
23 Q. Right. So, when you say you were forced to accept
24 the disability retirement, you're saying that you

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1 could not return based on the incident that happened
2 to you; is that right?
3 A. That would be a fair statement.
4 Q. You're not saying you were entitled to some other
5 type of retirement, are you, sir?
6 A. No.
7 Q. It wasn't clear for the record. Mr. Kelley, in
8 paragraph 14 of Exhibit 1 of your complaint, you
9 indicate that prior to the date of May 25th, the
10 Union approached Chief Pomeroy and requested he
11 institute a protocol to review members of the force
12 who might not be physically able to participate in a
13 drill. Do you see that?
14 A. Uh-huh.
15 Q. You just have to answer yes for the record.
16 A. Yes, I'm sorry. Excuse me.
17 Q. First of all, who from the --
18 MR. ARMSTRONG: I'm sorry, where are you on
19 the complaint?
20 MR. SILVERFINE: Paragraph 14.
21 MR. ARMSTRONG: Thank you.
22 Q. Who approached Chief Pomeroy relative to this?
23 A. I believe the president of the Union, Paul Boyle did
24 in negotiations.

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1 Q. Besides Mr. Boyle, who else?
2 A. I don't know who was at the meeting. It would have
3 been any of the Union officials who were there. I
4 know Paul talked with him.
5 Q. Were you present?
6 A. No.
7 Q. What was your understanding of what was specifically
8 said to the Chief relative to this meeting?
9 A. My understanding is that at that meeting they had a
10 discussion, some type of discussion on -- the Union
11 had concerns about injuries from this training; and
12 that's what was discussed at the meeting.
13 Q. When you say "injuries," are you referring to the
14 injuries Mr. Boyle mentioned in his deposition the
15 other day, some kind of gas mask; is that right?
16 A. I know at the time there were a number of concerns
17 that officers had heard about. The intensiveness of
18 the training, the type of training, and that there
19 were injuries. I believe that was what was brought
20 up at the meeting.
21 Q. Were specific officers mentioned, to your knowledge?
22 A. No. I don't know exactly. I wasn't at the meeting.
23 Q. So, your name specifically did not come up; is that
24 correct?

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1 A. I couldn't tell you that.
2 Q. But you were sitting at the same deposition the other
3 day and heard Mr. Boyle discuss this same topic,
4 correct?
5 A. I didn't particularly hear -- I didn't hear
6 anything. I wasn't sitting at the table. I was back
7 in the other room, but I know it was brought up.
8 Q. You weren't sitting behind me the other day --
9 A. I was behind you, but not right on top of him. I
10 didn't hear exactly what he said.
11 Q. We were in the room together with Mr. Boyle, these
12 two counsel and yourself, and we all listened to
13 Mr. Boyle talking. You're saying you didn't hear
14 that?
15 A. I heard it, yes.
16 Q. And Mr. Boyle mentioned something to do with a gas
17 mask, but he also did not mention any officers,
18 including you, having been brought up to Chief
19 Pomeroy; is that right?
20 A. If that's what he said, I guess that must be
21 correct.
22 Q. You say in paragraph 15 of this Exhibit 1 that the
23 Union advised Chief Pomeroy there were officers with
24 existing medical conditions, do you see that?

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1 A. Uh-huh.
2 Q. You have to say yes for the record, sir.
3 A. Yes, I'm sorry. Yes.
4 Q. Were any specific officers mentioned to Chief Pomeroy
5 by the Union?
6 A. I don't know.
7 Q. Was your name mentioned specifically to Chief
8 Pomeroy?
9 A. I don't know.
10 Q. When did this discussion as far as you understand
11 take place?
12 A. What was the question now?
13 Q. When did this meeting take place between the Union,
14 Mr. Boyle, and Chief Pomeroy?
15 A. I believe they had scheduled negotiations and they
16 brought it up during that. I don't know the exact
17 date.
18 Q. How far in advance of May 25th was this meeting?
19 A. I couldn't tell you.
20 Q. Was this drill specifically discussed at this
21 meeting?
22 A. I couldn't tell you. I wasn't at the meeting.
23 Q. Well, I'm asking you because you put this in as part
24 of your allegations in your complaint, what you know

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1 about it and who would have information about that.
2 So, since you listed it here, and this is a verified
3 complaint, I'm just asking you what information you
4 have about it?
5 A. Paul Boyle would -- he was at the meeting. He would
6 have more specifics than I would. I know he did tell
7 me they did discuss it at a meeting with the Chief.
8 Q. So, you don't know whether or not this drill was
9 specifically discussed?
10 A. I believe it was.
11 Q. And you don't know when it was?
12 A. I don't know when the negotiations were.
13 Q. This was a regularly scheduled negotiation between
14 the Union and the Chief?
15 A. I believe they were impact bargaining about the
16 AR-15s, the new weapons that they were putting out.
17 Q. But there wasn't a specific meeting about the drill
18 that was upcoming? This meeting was a regularly
19 scheduled negotiation, would that be fair to say?
20 A. I would say that would be fair to say.
21 Q. In paragraph 16 you wrote that Chief Pomeroy refused
22 to establish or institute any type of protocol, do
23 you see that?
24 A. Yes, I do.

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1 Q. What's the basis of your knowledge about that?
2 A. From hearing it through the grapevine and we heard
3 that the issue was brought up by the Union. And
4 basically, from the way I understand it, they said
5 there was no concern on the Department's side. They
6 said that the State Police had everything; and that
7 was the end of it.
8 Q. And just so I'm clear. Is this again information you
9 received from Mr. Boyle or anyone else?
10 A. I don't know exactly if it was from Paul. I heard it
11 through the -- you know, like at roll call. There's
12 always discussions of various current matters going
13 on. It was through the grapevine. I can't
14 specifically pull a name out of a hat.
15 Q. That's what I'm asking you. Because, again, you've
16 indicated that the Chief refused to establish any
17 type of protocol. So, where did you get that
18 information from?
19 A. I got that from the general consensus of the officers
20 at the station.
21 Q. But the only officer you understood to be present was
22 Paul Boyle?
23 A. Correct. He was at the meeting when this issue was
24 discussed.

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1 Q. So, the rest of the information would have been, fair
2 to say, hearsay, because Mr. Boyle was the only one
3 present with Chief Pomeroy?
4 A. I can't categorize it in any category.
5 Q. You tell me what direct information you have other
6 than hearsay?
7 A. Other than hearing it from the grapevine, that's all
8 I have.
9 Q. In paragraph 17 of Exhibit 1 you said you submitted a
10 request for reimbursement. To whom did you request
11 reimbursement from?
12 A. I contacted the Union steward at the time, Larry
13 Rooney.
14 Q. Larry Rooney?
15 A. Uh-huh.
16 Q. Can you spell the last name?
17 A. R-O-O -- Rooney, R-O-O-N-E-Y.
18 Q. He is a police officer?
19 A. Yes, he is.
20 Q. He's also the Union steward?
21 A. Uh-huh.
22 Q. Just answer for the record.
23 A. Yes, I'm sorry.
24 Q. What did you do through Larry Rooney?

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1 A. I gave Larry Rooney the finding of fact from the
2 Board, because I had already been retired at the
3 time. I gave him the doctor's certificate. I gave
4 him the doctor's narrative.
5 Q. When you say "doctor's certificate," which doctor are
6 you referring to?
7 A. The medical panel's certificate.
8 Q. That's the three-panel --
9 A. Correct.
10 Q. You gave him that certificate?
11 A. Yes.
12 Q. And what else?
13 A. I gave him the physician's narrative statement that
14 would go with that certificate.
15 Q. And again, that's the three-member panel?
16 A. Correct.
17 Q. What else?
18 A. I gave him the finding of fact that the Board had
19 found.
20 Q. Okay. Anything else?
21 A. That was entered into my record for retirement. I
22 gave him those and asked him to speak to the Chief
23 about my 111F benefits.
24 Q. This is the complaint you have, that you were

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1 you already now officially retired?
2 A. That's correct.
3 Q. So, you were retired as of September 8, 2003?
4 A. That's correct.
5 Q. The grievance procedure was no longer available to
6 you?
7 A. That's correct.
8 Q. And that's because you were now officially retired?
9 A. That was a discussion that we had with the Union and
10 there was a problem with that, correct.
11 Q. But you did attempt to gain back your \$2,000 through
12 the Union subsequent to your retirement?
13 A. I asked them to request it from the Department
14 and...
15 Q. And they did that for you, did they not, sir?
16 A. They did. There's an e-mail, I believe, from Larry
17 Rooney that indicates that he spoke to the Chief
18 about it, to Paul Boyle.
19 Q. They actually, I think, on one or two occasions
20 presented the facts for you, your case to Chief
21 Pomeroy, right?
22 A. That's correct.
23 Q. And I think they did it on two occasions,
24 November 24th and December 1st, 2003?

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1 entitled to some \$2,000 reimbursement for vacation
2 time that you had to use for sick leave as far as
3 after May 25th, 2003?
4 A. Correct.
5 Q. And this essentially is the genesis of your
6 complaint, is it not, sir?
7 A. It's part of my complaint.
8 Q. This is where it all began, isn't it, sir?
9 A. I wouldn't say exactly to that effect, but it's part
10 of my complaint.
11 Q. You're saying the \$2,000 disagreement is not the
12 beginning of your complaint; is that right?
13 A. It's part of my complaint.
14 Q. Well, what is the -- what's the initial -- what do
15 you say is the beginning of your complaint, if it's
16 not the disagreement over the \$2,000?
17 A. Well, if you're taking it in that respect, yes, it
18 would be the beginning, okay. It's fair to say.
19 Q. I'm just reading your complaint. So, the
20 disagreement about whether or not you're entitled to
21 reimbursement for \$2,000 is the beginning of your
22 complaint; is that fair to say?
23 A. Following that logic, that's correct.
24 Q. When you first had this disagreement come up, were

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1 A. Correct.
2 Q. Is that right?
3 A. That would be fair, yes.
4 Q. And the Chief then denied your claim, correct? Is
5 that my understanding?
6 A. A copy of the e-mail that I received from
7 Dana Goodwin, which was from Dana -- which was from
8 Larry Rooney, who went to the meeting, as you can see
9 there, Larry Rooney and Dana Goodwin, he sent it to
10 Paul Boyle. That indicated that the Chief disagreed
11 with the medical panel and refused to pay me.
12 Q. Now, the Chief, as I understand it, had a
13 disagreement that the Heart Law was applicable to
14 111F; is that fair to say?
15 A. I don't know what his thinking was. I don't know
16 what his thinking was of how he made a decision.
17 Q. Well, you have seen all the correspondence back and
18 forth between the Chief and the Retirement Board,
19 have you not?
20 A. Yes, I have.
21 Q. And you're aware that he's -- his position has been
22 that he is essentially saying that the 111F benefits,
23 under the Heart Law, is inapplicable; you understand
24 that, right?

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- 1 A. I don't follow you logically there.
2 Q. I'm asking if that's what the Chief claimed,
3 right?
4 A. I don't think that's correct.
5 Q. You were sitting in on the Michael Sacco deposition
6 as well the other day, correct?
7 A. Yes, I was.
8 Q. You were in the same room as your counsel, myself --
9 A. Correct.
10 Q. -- when Mr. Sacco testified?
11 A. Correct.
12 Q. Do you recall Mr. Sacco saying, even in his letter
13 that he wrote on your behalf, that there was a
14 question about whether or not the Heart Law did or
15 did not apply to 111F benefits? Do you remember
16 that, sir?
17 A. In some incidents, that's correct, sir.
18 Q. And that's the same concern that the Chief had at
19 that point in time relative to the application of the
20 111F benefits for that period of time?
21 A. I disagree with that statement.
22 Q. Well, tell me what's wrong with that statement.
23 A. Because I suffered an injury that day and I should
24 have been -- my feeling is I should have been awarded

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- 1 111F benefits. I went to the hospital via ambulance,
2 semiconscious, under oxygen. I went from there to
3 the -- from the high school to the hospital. I was
4 treated there. I left the hospital via ambulance to
5 Boston. I had a cardio catheterization done; and
6 subsequently, after that, I had to retire.
7 I was at the training program with Captain
8 Chandler, who physically aided me and dragged me out
9 of the room as I collapsed against the wall on top of
10 two other officers. I have no understanding of how
11 someone couldn't say that that event was not in
12 the performance of my duty and I didn't suffer an
13 injury.
14 Q. As part of your obligation, when you suffer an
15 injury, you had to submit a couple of notes from your
16 doctors back at the time, right?
17 A. Yes, I did.
18 Q. And I'm going to show you --
19 MR. SILVERFINE: First of all, we'll mark
20 this as Exhibit 3.
21 (EXHIBIT 3 MARKED FOR IDENTIFICATION)
22 Q. Exhibit 3, which I'm placing before you, do you
23 recognize that?
24 A. (Witness perusing document) Yes, I do.

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- 1 Q. This was the initial note that you submitted for your
2 medical treatment, is that right, after May 25th,
3 2003?
4 A. That was after my cardio cath the next day. The
5 doctor that performed the cath was not available.
6 The report of the catheterization was not available
7 and I said to this attending physician that was on
8 staff, can you just give me something so I can bring
9 it -- knowing that the requirement of the IOD policy
10 is to have something. I asked her to give me
11 something.
12 She wrote that as a courtesy. There was no --
13 she had not done the catheterization. She had not
14 reviewed the files. I wasn't in her estimate -- I
15 didn't know what I had myself. So, I just asked her
16 for something so I could give it to my employer.
17 Q. My question was: Is this what you submitted to your
18 employer?
19 A. It was a very preliminary report until I got all the
20 reports back.
21 Q. I'm not debating that. My question simply is --
22 A. Yes, okay.
23 Q. -- is this what you submitted to your employer?
24 A. On a preliminary basis, correct.

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- 1 Q. Whether you're submitting 400 pages later, I'm not
2 asking that. This is what you first submitted,
3 right?
4 A. Uh-huh.
5 Q. Is that correct?
6 A. Yes.
7 Q. You'll agree with me, at least in Exhibit 3, the
8 second line says, from Dr. Bazzano, B-A-Z-Z-A-N-O,
9 "He may return to work two weeks from his hospital
10 discharge date." That's what it said here; is that
11 fair to say?
12 A. Correct.
13 Q. Now, later you submitted an additional document to
14 the Chief relative to your care and I'm going to show
15 you another letter.
16 MR. SILVERFINE: We'll mark this as
17 Exhibit 4.
18 (EXHIBIT 4 MARKED FOR IDENTIFICATION)
19 Q. I'm showing you, Mr. Kelley, what's been marked as
20 Exhibit 4, and I'm just asking you if you recognize
21 that as the next document you submitted to your
22 employer relative to your care?
23 A. (Witness perusing document) Yes, I do.
24 Q. Again, I'm just asking you. This second document

EXHIBIT A CONTINUED

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1 that you submitted to the Town, Exhibit 4, in part,
 2 says that you would be best served medically by
 3 staying out of work for the rest of his vacation
 4 time, about a month. We will be adjusting his meds
 5 during that period of time. I think his overall
 6 prognosis for the future is good. He should be able
 7 to return to work and it's signed Donald M. Moore,
 8 M.D. Is what I read accurate?
 9 A. That's what the letter says, correct.
 10 Q. You indicate in paragraph 18 of Exhibit 1 that the
 11 Chief refused to reimburse your request for vacation
 12 time, right?
 13 A. That's correct.
 14 Q. And that's the \$2,000 disagreement that we just
 15 talked about a couple of minutes ago, right?
 16 A. That's correct.
 17 Q. And you additionally say in paragraph 18, "The
 18 Personnel Board of the Town of Plymouth refused to
 19 authorize reimbursement." Do you see that?
 20 A. Uh-huh.
 21 Q. You have to state it for the record.
 22 A. I'm sorry, yes. I see that.
 23 Q. Was there a written decision that was given to you
 24 from the Personnel Board?

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1 A. I never received a decision from anybody other than
 2 the Town Manager a year later.
 3 Q. So, how did you become aware that the Personnel Board
 4 refused to authorize the reimbursement?
 5 A. I requested from the Town, the Town Manager, in
 6 writing, an explanation of this matter.
 7 Q. Did you receive anything in writing?
 8 A. Nothing. It took me over a year.
 9 Q. And that document that you say you got was from the
 10 Town Manager, or the Personnel Board?
 11 A. I got it from the Town Manager.
 12 Q. Did you ever get anything from the Personnel Board?
 13 A. Personnel? I think it might have been from
 14 Mrs. Flynn, who is in charge of the Personnel Board.
 15 Q. Is that Pat Flynn?
 16 A. That's Pat Flynn, correct.
 17 Q. Is she the only person on the Personnel Board?
 18 A. Well, she's in charge of it and in charge of benefits
 19 and all those issues.
 20 Q. Who was on the Personnel Board back in September
 21 2003?
 22 A. I don't remember. I think it would have went to the
 23 Personnel Board. It would have went to her. I
 24 contacted her several times.

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1 Q. The reason why I'm asking you again is because in
 2 your complaint you wrote, "The Personnel Board
 3 refused to authorize reimbursement." So, who are you
 4 referring to?
 5 A. It would have been Mrs. Flynn. She is in charge of
 6 the Personnel Board.
 7 Q. So, besides the verbal conversation -- when did that
 8 conversation take place?
 9 A. What conversation?
 10 Q. You said she denied your --
 11 A. I asked Mrs. Flynn for the money and I asked her to
 12 look into this matter, and she never gave me anything
 13 in writing.
 14 Q. When did you have a conversation with her?
 15 A. Oh, on and off for -- right after the incident, after
 16 I got all the documentation. I requested it from
 17 her several times in phone calls and finally -- I
 18 never got an answer from her.
 19 Q. Did you eventually say you got something in writing
 20 from her?
 21 A. I got an answer from Pam Nolan in writing. It stated
 22 I agree with the Chief. There's nothing here to
 23 overturn his decision. That was all I ever got.
 24 Q. You did eventually get something, I believe, from the

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1 Chief, though, did you not, in -- well, actually,
 2 before you even retired. In June 2003 you got a
 3 letter from the Chief, right?
 4 A. I got a letter from the Chief about medical bills.
 5 (EXHIBIT 5 MARKED FOR IDENTIFICATION)
 6 Q. Just so we're clear. I'm going to show you a letter
 7 we've marked as Exhibit 5. On June 24, 2003, did
 8 you --
 9 A. (Witness perusing document) Yes, I did.
 10 Q. You got the copy of this that I'm showing you as
 11 Exhibit 5?
 12 A. I did.
 13 Q. And in his letter of June 24th, 2003 -- which he
 14 wrote to you at home, right?
 15 A. Yes. I was at home.
 16 Q. He discusses 111F benefits, does he not, in terms of
 17 his understanding of what is required, right? As far
 18 as his explanation of why he was doing what he did,
 19 right?
 20 A. That's what he wrote in the letter.
 21 Q. Right. In paragraph 3, for instance, he wrote, "To
 22 be approved as an 'Injury on Duty,' a police officer
 23 must be 'incapacitated for duty because of injury
 24 sustained in the performance of his duty without

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1 fault of his own." Do you see that?
 2 A. Yes, I do.
 3 Q. And he indicated just below that the only medical
 4 reports the Police Department received was the letter
 5 from Dr. Bazzano, which is now Exhibit 3 in this
 6 deposition, right? And a note from Dr. Moore, which
 7 is now Exhibit 4 in this deposition, correct?
 8 A. Correct.
 9 Q. And he also wrote on the second page, two paragraphs
 10 up from your signature, that the Heart Law does not
 11 necessarily apply to injured-on-duty leave under
 12 111F, correct?
 13 A. That would be correct.
 14 Q. So, at least back in June of 2003, the Chief was
 15 explaining to you why, based upon the submissions of
 16 the documents you provided, he was at that point not
 17 approving 111F benefits as they applied at that time;
 18 is that fair to say?
 19 A. That was what he decided.
 20 Q. Well, I'm just asking you. Is it fair to say that's
 21 what he wrote to you in the letter and that was his
 22 concerns based upon the documents that you provided
 23 to him?
 24 A. I can't make a judgment on how he -- I'm just saying

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1 that's what he sent me, this letter, and that's what
 2 it was.
 3 Q. And you'll agree with me, back in June 2003,
 4 Exhibit 4, he had before him Exhibit 3 and Exhibit 4
 5 in this deposition, those are the two documents that
 6 were submitted to him, correct, by you at that
 7 point?
 8 A. Correct. He also had my injury reports, Captain
 9 Chandler's report, several officers' reports.
 10 Officer Chandler -- Captain Chandler went to the
 11 hospital when I was at the hospital. When I woke up,
 12 he was there. He had all the verification he needed
 13 that something must have happened.
 14 Q. I understand. I'm just asking you -- what I'm
 15 asking you in terms of your medicals is that's what
 16 he had at that point?
 17 A. Yes.
 18 Q. In paragraph 21 you said, "The year before this
 19 drill, in your capacity as a Town meeting member,"
 20 how long had you been a Town meeting member?
 21 A. I believe since 1992.
 22 Q. What does a Town meeting member do in the Town of
 23 Plymouth?
 24 A. The Town of Plymouth has elected Town meeting members

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1 from each precinct. It's a Town meeting form of
 2 government. We're elected from each precinct.
 3 There's eight members from each precinct and we're
 4 the legislative body of the Town. We raise and
 5 appropriate funds. We adopt statutes and pass
 6 bylaws, that type of thing.
 7 Q. And you also wrote you were a member of the Plymouth
 8 Retirement Board. How long had you been a member of
 9 the Plymouth Retirement Board?
 10 A. Since 1996.
 11 Q. Is that an appointed or elected position?
 12 A. By statute that's an elected position. I represent
 13 the employees of the Town.
 14 Q. And the employees -- all the employees?
 15 A. All the employees.
 16 Q. Are there any other Town employees who also serve on
 17 the Retirement Board?
 18 A. Yes, there is.
 19 Q. Who is that?
 20 A. By statute you would have the treasurer, or his
 21 designee. You would have an independent pick by the
 22 Board. You would have another re-elected member.
 23 You would also have a Selectmen's -- the Board of
 24 Selectmen have a pick. They put on someone that they

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1 appoint to be on the Board of Selectmen.
 2 Q. How many members are on the Plymouth Retirement
 3 Board?
 4 A. Five.
 5 Q. Are there any other police officers besides yourself
 6 who have served in your time there?
 7 A. No.
 8 Q. Now, you indicate that you raise an issue regarding
 9 Chief Pomeroy's use of funds, do you see that?
 10 A. Uh-huh.
 11 Q. You have to answer for the record.
 12 A. Yes. I'm sorry, yes.
 13 Q. How did you raise that issue?
 14 A. Well, that issue started a number of years prior to
 15 that.
 16 Q. Tell me when it first began.
 17 A. Around 1998.
 18 Q. How was that issue raised?
 19 A. There was an overpayment in Needham of funds and we
 20 received several memos from PAREC, our regulatory
 21 agency, to be aware of all your compensation, all
 22 your -- what do you call it? -- appropriate coverages
 23 for what they call regular compensation under
 24 Chapter 32. Be aware of it. Check it to make sure

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- 1 that it meets the requirements of regular
 2 compensation, because of what happened in Needham.
 3 There was an overpayment made and it created a lot of
 4 problems.
 5 Q. My question was: How did you first raise this
 6 issue?
 7 A. I first raised the issue when we had that happen, as
 8 well as there was a -- I read in the newspaper there
 9 was a lawsuit in Duxbury involving the Quinn bill
 10 with the Chief over there. Chief -- his name was
 11 Showstead at the time and it was in front of Judge
 12 DelVecchio in Plymouth, which indicated, I believe,
 13 he took -- he was suing for back pay. The judge's
 14 finding said he was -- he got those benefits pursuant
 15 to a Collective Bargaining Agreement, but as a Chief,
 16 he was covered by the personnel bylaw and there was
 17 no provision for that in the bylaw.
 18 Q. So, I'm still not sure how you raised it. To whom
 19 did you raise this issue to, as you say, back in
 20 1998?
 21 A. I mentioned it, I know, to the Chief Financial
 22 Officer, Patrick DellaRusso.
 23 Q. Was this an open meeting, or was this a meeting
 24 between you and Mr. DellaRusso?

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- 1 A. Just a meeting between me and him.
 2 Q. You casually mentioned it. How did you mention it?
 3 A. I mentioned to him I looked at the personnel bylaw
 4 and given the Needham decision and the issues there,
 5 I had a concern that there was no governing document
 6 for salaries being paid.
 7 Q. When you say salary -- your limitation at that point
 8 was just as to his salary, as to the Chief's salary?
 9 A. It was salaries paid to the Police Chief and the
 10 Police Captains. The additional monies was not in
 11 the personnel bylaw.
 12 Q. What additional monies are you talking about?
 13 A. They were getting paid 30 percent more for the Quinn
 14 bill benefits and they were getting paid holiday
 15 money and uniform allowances, which were not in the
 16 personnel bylaw.
 17 Q. So, these were the Quinn bill, holiday money, uniform
 18 allowances. Were those all benefits that other
 19 patrolmen such as yourself were receiving?
 20 A. Those were collective bargaining benefits.
 21 Q. Those were benefits you and other patrolmen were
 22 receiving back in 1998?
 23 A. Patrolmen and Sergeants.
 24 Q. Which you were one of them?

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- 1 A. Yes.
 2 Q. So, you had an issue with the Captains and the Chief
 3 at that time also receiving that benefit?
 4 A. I had an issue there, but I had a concern given I
 5 spoke to our attorney, Mike Sacco about it, and the
 6 problem is that in the event of an audit, we had
 7 people out retired under those conditions that we
 8 would not be able to substantiate their pay.
 9 Q. What did Mr. Sacco tell you when you brought up this
 10 issue?
 11 A. He spoke to Patrick DellaRusso and indicated to
 12 Patrick the best thing would be to have the Town
 13 amend the bylaw to cover the compensation paid. And
 14 Patrick DellaRusso in a casual, quiet form attempted
 15 to talk to Mrs. Beth about that and get the matter
 16 resolved by adjusting the personnel bylaw to cover
 17 these monies.
 18 Q. Well, I'm a little confused here. Are you saying
 19 that they went forward in an attempt to amend the
 20 bylaws so that the ranking officers would be
 21 compensated under the Quinn bill, holiday, and
 22 uniform allowance?
 23 A. That was our recommendation.
 24 Q. You recommended that?

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- 1 A. Patrick recommended that they do that.
 2 Q. Was that your recommendation?
 3 A. That was the recommendation we had from our counsel.
 4 Q. When you say "we," you're saying you in terms of the
 5 Union, your counsel --
 6 A. No, Patrick. The Board, the Retirement Board. We
 7 had concerns.
 8 Q. You're saying the Retirement Board was in agreement
 9 with this; that officers, superior officers should
 10 get it?
 11 A. The issue was never who should get it or not. The
 12 issue was --
 13 Q. I'm a little confused. I'm not understanding.
 14 You're saying you raised the issue relative to the
 15 Chiefs and the Captains receiving these benefits,
 16 right, the 30 percent under the Quinn bill, the
 17 holiday, and uniform allowance?
 18 A. I raised it in the context that there was no written
 19 document. In their case, it would have been the
 20 personnel bylaw, that did not address these
 21 additional monies.
 22 Q. And you're saying that your lawyer said they should
 23 address it, it was brought to Eleanor Beth, and she
 24 tried to get it passed through --

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1 A. No, I'm not saying that.
 2 Q. You tell me. I'm a little confused here.
 3 A. What happened is that once I established that there
 4 was a problem, I spoke to Mike Sacco about it. Mike
 5 said the best thing to do would be to ask the Town to
 6 amend the bylaw covering the document, which would
 7 have documented the compensation paid, which would
 8 then, when the compensation that is paid is delivered
 9 to us, it would be put into the retirement formula.
 10 We would have a backup document that would indicate
 11 that all the monies were properly -- had a supported
 12 document in the event of an audit. That was our
 13 recommendation to the Town.
 14 Q. What happened after that?
 15 A. The Town took no action.
 16 Q. Eventually, did the Town take action?
 17 A. The Town took action after it ended up in the
 18 Inspector General's Office.
 19 Q. I'm a little confused here. You're saying you're all
 20 in favor of this? You're all in favor of it?
 21 A. I wasn't trying to gyp anybody out of anything.
 22 Q. So, you're in favor of this for the superior
 23 officers, the same thing the patrol officers are
 24 getting, including yourself?

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1 A. Absolutely.
 2 Q. You take it to Eleanor Beth, she says I'm going to
 3 try to do something, nothing happens, and then you
 4 went to the Inspector General's Office?
 5 A. What happened was the problem we were having is -- I
 6 was advised by Mike, unless the Town takes action,
 7 Tom, in the event of an audit, someone could say that
 8 you knew about the situation. You have a fiduciary
 9 responsibility to the fund; you have personal
 10 knowledge of a mistake out there. You need to
 11 correct it and take the appropriate action, or they
 12 can accuse you of being in collusion or looking the
 13 other way. And I was not going to put myself in that
 14 position.
 15 Q. All right. Again, bear with me, because I'm looking
 16 at your complaint. In paragraph 21 you wrote -- you
 17 alleged the Captain was accepting compensation and
 18 not showing it on the budget which was prohibited by
 19 statute?
 20 A. That's correct.
 21 Q. So, you were saying -- but you're saying you're all
 22 in agreement now today under oath that he should be
 23 entitled to the 30 percent Quinn bill, holiday pay,
 24 and uniform allowance?

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1 A. That's not what I said.
 2 Q. That's not what you said?
 3 A. That's correct.
 4 Q. So, you were concerned that someone would accuse you
 5 of not following the bylaws and allowing this money
 6 to go out to him without some kind of provision?
 7 A. What I said was very simple. In municipal finance
 8 there is always a governing document, meaning, when
 9 you follow the money trail back as an auditor, or an
 10 auditor would do, he would follow back the benefit
 11 paid by us into the formula process. He would then
 12 back it back down to the money received by the Town;
 13 and then he would back it to the governing document.
 14 In this case, the governing document did not
 15 address the compensation that was being paid pursuant
 16 to verbal agreements. It would be -- you would have
 17 no way of auditing that number from the governing
 18 document to payroll. There was a substantial
 19 difference in funds.
 20 We requested that the Town address this in the
 21 event of an audit. We had officers out there that
 22 were retired under these conditions; and given the
 23 Needham situation, if an auditor walked in from the
 24 State, which they could at any time, they could turn

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1 around and pull the file and ask for all the
 2 governing documents and we would not be able to
 3 substantiate the funds that they were being paid for
 4 those conditions.
 5 Our request was to turn around and properly put
 6 the appropriate documentation and governing document
 7 in and lines in place for these people that were
 8 covered, which would allow us to justify the pensions
 9 that these people would receive. That was my
 10 obligation and that was my advice.
 11 Q. Besides Eleanor Beth, who else did you talk to from
 12 the Town?
 13 A. Patrick DellaRusso wanted -- he was the Chairman at
 14 the time. He said he would approach the Town and
 15 attempt to clear up this matter.
 16 Q. So, besides Patrick DellaRusso and Eleanor Beth,
 17 anyone else that you spoke to from the Town?
 18 A. They were the two people there that were in charge of
 19 it.
 20 Q. You also said we?
 21 A. That was a mistake. I spoke to Patrick.
 22 Q. So, you're the one who spoke to them about this?
 23 A. I didn't speak to them directly. Patrick did.
 24 Q. You spoke to Patrick and you did not talk to

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1 Eleanor Beth directly?

2 A. Not at this point, no. He then spoke to her about

3 the concern that we had.

4 Q. You also mentioned other officers. What other

5 officers would be effected by this?

6 THE WITNESS: In my complaint here?

7 MR. SILVERFINE: No. You just said it two

8 seconds ago.

9 A. What would happen -- what happened was this, we had

10 other officers -- I could give you an example. We

11 had previous Chiefs that were receiving benefits

12 under these conditions that were into their

13 retirement tabulation, we had previous Captains that

14 were out under these conditions. And my fear was

15 that if there was an audit, their pensions could

16 conceivably be adjusted until this situation was

17 cleared up with the Town.

18 So, we took the proactive approach to say that

19 these people did nothing wrong; that the Town should

20 correct the situation, so that all the governing

21 documents and proper appropriations and proper

22 documentation is in place.

23 (BRIEF RECESS)

24 Q. When you said you were suffering from Lyme disease

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1 you wouldn't?

2 A. That's correct.

3 Q. Back to Exhibit 1, which is again your complaint, we

4 were on paragraph 21. When you said you had this

5 discussion with Patrick DellaRusso, did you ever send

6 anything to him in writing on this subject?

7 A. No. We just discussed it verbally.

8 Q. How about Eleanor Beth, did you send anything to her

9 in writing?

10 A. No. He wanted to approach her and handle the matter.

11 Q. Did you send it to anyone in writing about this issue

12 back in 1998?

13 A. No.

14 Q. In your complaint you wrote -- and again, I'm

15 focusing on your complaint. In paragraph 21, the

16 last sentence, you wrote -- you allege Chief Pomeroy

17 was accepting compensation and not showing it in his

18 budget. You also mentioned a few minutes ago under

19 oath that there are other officers who had accepted

20 or were accepting compensation. Are you now stating

21 there were other officers who were on his budget that

22 were not showing it, or just Chief Pomeroy?

23 A. There were two Captains and himself.

24 Q. But you said here just Chief Pomeroy in your

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1 and Meniere's disease prior to May 25th, 2003, you

2 would agree that those aren't life-threatening

3 diseases, correct?

4 A. I'm not a doctor. I can't agree to that at all.

5 Q. Did you retire -- did you put in for retirement

6 prior to May 25th, 2003?

7 A. No.

8 Q. Were you suffering from a life threatening -- because

9 if you're saying they were life threatening, did you

10 apply for disability retirement due to those diseases

11 prior to May 25th, 2003?

12 A. No.

13 Q. Right. So, my question is: You were able to go to

14 work?

15 A. I was working. That's correct.

16 Q. And you were living with these diseases under

17 medication prior to May 25th, 2003; is that fair to

18 say?

19 A. That's correct.

20 Q. You were on medication and you were seeing a

21 doctor?

22 A. Yes.

23 Q. And if you could, I'm assuming most of the time, like

24 some of us, you would go to work; and when you can't,

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1 complaint?

2 A. That's what it says.

3 Q. Again, this is your complaint. That's why I'm

4 asking. Did you complain about the other Captains?

5 A. By the word "complain," what do you mean by

6 "complain"?

7 Q. Well, you made certain -- again, they're your words.

8 You allege allegations Chief Pomeroy was accepting

9 compensation. Were your allegations strictly with

10 Chief Pomeroy?

11 A. My intention was --

12 Q. No, not your intention. What did you discuss back in

13 1998 with Patrick DellaRusso?

14 A. We discussed the concern that we had for not having

15 justification for the compensation that they were

16 receiving, which was then put into formulas for

17 retirement.

18 Q. My question then is: Did you complain just about

19 Chief Pomeroy, or did you complain about others as

20 well?

21 A. We spoke about -- we found out the Captains were

22 doing the same thing and the bylaw didn't address

23 them as well.

24 Q. So, is your testimony today that you spoke -- when

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1 you say "we," are you referring to you and others?
 2 A. I mean, me and Patrick had spoke.
 3 Q. I don't know if it's a royal we.
 4 A. No, I agree.
 5 Q. You and Mr. DellaRusso had a conversation about Chief
 6 Pomeroy, right?
 7 A. We had a conversation about the compensation being
 8 received from the various people in the Police
 9 Department and Chief Pomeroy.
 10 Q. Are you saying there were other officers you were
 11 complaining about as well back in 1998?
 12 A. I wasn't complaining. I was concerned about the
 13 ability to justify the compensation in the event of
 14 an audit and we had officers like them in the same
 15 condition and capacity that had already retired.
 16 Q. Which officers do you recall talking to Patrick
 17 DellaRusso back in 1998?
 18 A. I told him that from my memory, we had -- Captain
 19 O'Meara had just retired, we had a previous Chief,
 20 Chief Bill Murphy, we had Captain Ireland, all in the
 21 same category of these people; that their
 22 compensation was not spelled out in the personnel
 23 bylaw. So, we needed to take corrective action so
 24 that in the event of an audit -- Patrick was a

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1 Q. And was it approved?
 2 A. Subsequently, they approved the monies. They amended
 3 the bylaw to cover all the monies that were -- you
 4 know, the bylaw then clearly indicated what was being
 5 paid; and that was placed into the bylaw and approved
 6 by a Town meeting.
 7 Q. And you are a Town meeting member?
 8 A. Yes, I am.
 9 Q. And you voted in favor?
 10 A. Yes, I did.
 11 Q. And this was in 2001 --
 12 A. No, this was in 2003 -- 2001, you're right.
 13 Q. I'm saying what you're telling me. I don't want to
 14 put words in your mouth.
 15 A. No. It was in 2001, September. I'm getting a little
 16 confused.
 17 Q. Let me just ask you this then: In paragraph 21 you
 18 wrote about a year before the drill, which would be
 19 roughly May 2002, you raised these issues; that
 20 would be inaccurate then based on what you just told
 21 us?
 22 A. That would be inaccurate. That's correct.
 23 Q. Again, just basing it on what you told us?
 24 A. Yes.

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1 previous auditor -- you needed to have the
 2 appropriate governing document in place so that our
 3 justification for paying them the funds in their
 4 retirement computation would be backed up by the
 5 appropriate governing document.
 6 Q. Now, you told us this took place in 1998, right?
 7 A. We started in 1998. I became aware of it probably, I
 8 want to say, May, June of '98. Patrick was going to
 9 take steps to take the -- because you only have one
 10 or two Town meetings and then there is what they call
 11 cutoff dates for the warrant. So, you have to -- if
 12 you were going to have a fall Town meeting, you would
 13 have to have -- the warrant might be closed, I think,
 14 in June. The Town meeting would be in the fall, so
 15 you had to basically strategize when you could put
 16 something on the warrant and have it approved and
 17 amend the bylaw at that time.
 18 Q. Did you bring this up, to have it on the warrant?
 19 A. It was not my prerogative to do that. Patrick said
 20 he would handle it.
 21 Q. Was this issue brought to a Town meeting?
 22 A. Pardon me? Yes, it was. That's correct.
 23 Q. When was that?
 24 A. I believe it was in the fall of 2001.

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1 Q. Because you told me in 1998 it took a while to get it
 2 on the warrant and at the Town meeting in 2001 this
 3 was voted on and approved?
 4 A. Correct.
 5 Q. And you approved it. You raised your hand and you
 6 approved it as well?
 7 A. Yes.
 8 Q. And this included the officers you mentioned, the
 9 Captains, plus Chief Pomeroy, plus some retired
 10 officers?
 11 A. Correct. It would have put the appropriate governing
 12 documents in place. And in the event of an audit, we
 13 would have been clearly able to justify and protect
 14 the members; that was one of my biggest concerns is
 15 somebody has their pension adjusted.
 16 Q. Do you remember what month it was approved in the
 17 Town meeting of 2001?
 18 A. I want to say September 2001.
 19 Q. So, as of September 2001, this was no longer an issue
 20 for you and the Retirement Board?
 21 A. It was then clarified, so then it was there.
 22 Q. Let's go down now to paragraph 22. You indicated you
 23 reported this to the IG's Office, the Inspector
 24 General's Office, do you see that?

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- 1 A. Yes.
 2 Q. First of all, who did you go with to the Inspector
 3 General's Office?
 4 A. I went with Dana Goodwin, Paul Boyle, and myself.
 5 Q. Dana Goodwin and Paul Boyle are both police
 6 officers?
 7 A. Yes, they are.
 8 Q. And they're both Union representatives?
 9 A. Uh-huh. Yes, I'm sorry.
 10 Q. Your counsel will tell you, so the record is clear,
 11 the stenographer can't take down uh-huh. I don't
 12 mean to keep reminding you, it's just so the record
 13 is clear. I don't mean to keep tweaking you.
 14 A. I apologize. I understand.
 15 Q. When did you go to the Inspector General's Office?
 16 A. I believe it was January 22nd of 2001.
 17 Q. Who did you meet with at the Inspector General's
 18 Office?
 19 A. I met with an Inspector Quinn and an Inspector
 20 O'Neil.
 21 Q. How long was the meeting?
 22 A. About four hours.
 23 Q. What documents did you present to the Inspector
 24 General's Office?

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- 1 A. I brought five years' budgets from the Police
 2 Department. I brought the Town bylaws back to
 3 1975.
 4 Q. Anything else?
 5 A. That's all that I brought.
 6 Q. For what purpose did you go to the Inspector
 7 General's Office?
 8 A. Given there was no action being taken by the Town, I
 9 then spoke to counsel. Patrick had spoke to the Town
 10 Manager, no action was being taken. I believe he
 11 even wrote her an e-mail of his concerns on the issue
 12 as being a former auditor.
 13 At that point, the harassment at my workplace
 14 was continuing at a fever pitch. I didn't want
 15 anybody to accuse me of collusion. I didn't want
 16 anybody to say that we looked the other way. And I
 17 didn't want people that were retired to have their
 18 pensions adjusted because the Town was not taking the
 19 appropriate steps.
 20 Q. Is it fair to say you went to the Inspector General
 21 for them to investigate a possible criminal
 22 complaint?
 23 A. I don't have that -- that's not my prerogative to
 24 discuss.

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- 1 Q. Well, you were a police officer, right? You've been
 2 one -- you were one for many years?
 3 A. Yes.
 4 Q. For what purpose did you go to the Inspector
 5 General's Office?
 6 MR. ARMSTRONG: He answered that question.
 7 MR. SILVERFINE: He can answer again.
 8 A. I spoke to Mr. Quinn on the phone one day, just an
 9 inquiry, and I placed some facts in front of him. He
 10 told me you must come in here and speak to us,
 11 because there are some serious issues here. He then
 12 explained to us what the process is and what they
 13 were going to do when I went in to Boston.
 14 Q. After you made your presentation, did anything happen
 15 vis-a-vis the IG's Office?
 16 A. Before we left the Inspector General's Office,
 17 Mr. Quinn asked myself, Dana Goodwin, and Paul Boyle
 18 if we were willing to testify in front of a Grand
 19 Jury. We all answered in the affirmative. He
 20 indicated there was enough here to put a Grand Jury
 21 together and he was going to contact Plymouth, get a
 22 Grand Jury together, and then contact us to come in
 23 and testify.
 24 Q. Are you aware that the IG's Office has no ability to

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- 1 put a Grand Jury together?
 2 A. Alls I can say is that's what Mr. Quinn told me.
 3 Q. You had been a police officer for how many years?
 4 A. Twenty-seven.
 5 Q. And you're unaware that the IG's Office has no
 6 ability to put a Grand Jury together?
 7 A. I have never dealt with the Inspector General's
 8 Office in my life.
 9 Q. Are you aware that they're not a prosecuting agency?
 10 A. Like I said, I did not know. I knew when I spoke to
 11 him on the phone, he made it clear to me that I
 12 needed to speak to him. I then made an appointment
 13 and I spoke with him.
 14 Q. After speaking with him, did you have any further
 15 contact with him?
 16 A. Yes, I did.
 17 Q. When was that?
 18 A. I waited a couple of months and I never heard from
 19 him. I then contacted him via the phone and asked
 20 him what was the status of the situation. He then
 21 said to me that we are investigating it. We have
 22 spoken to people and we'll be handling it civilly. I
 23 said, what does that mean? I said, you told us three
 24 police officers that you were going to put a Grand

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- 1 Jury together. I said, you know, that's a far cry
2 from what you're saying now. It was a complete
3 change of attitude towards it.
4 I also indicated to him that he put us in a
5 position for serious retribution in the Department.
6 He didn't have a good answer for that.
7 Q. Did you hear anything further from Mr. Quinn or
8 anyone else from the IG's Office?
9 A. About a year later I asked -- I called up again.
10 Mr. Quinn had retired. I asked Mr. O'Neil for a copy
11 of the report that's required by statute. He called
12 me back two days later and said he couldn't find a
13 copy of the report. I explained (sic) to him that
14 there was never a report written of over \$520,000 of
15 public funds? And he said there wasn't a report
16 written.
17 Q. I'm sorry, the figure of \$520,000, what's that from?
18 A. That was the figure that the Finance Chairman gave at
19 the Town meeting when someone asked how much money
20 has been paid for these conditions for over a 15-year
21 period.
22 Q. So, you are alleging, at least to the IG, that there
23 had been some type of an illegal payment to the Chief
24 and other officers, fair to say?

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- 1 A. I wasn't alleging anything. I was alleging that
2 there was a question of how these payments were being
3 made, the appropriateness of them without the
4 governing document, and the Town's action.
5 Q. Well, you're now saying you met in January of 2001?
6 A. Correct.
7 Q. You're saying also by sometime -- I think you said
8 September 2001, the Town meeting had already approved
9 of the practice and amended its bylaw?
10 A. Correct. I believe when the Inspector General spoke
11 with -- I believe it came out in the newspaper that
12 there was an investigation going on. The "Brockton
13 Enterprise" reported it sometime in August.
14 Q. How would the "Brockton Enterprise" learn of this?
15 A. I don't know. I know they contacted Mr. Griffin, who
16 was the former Town Manager, who allowed these verbal
17 agreements to go forward.
18 Q. How is it that anybody in the press would learn about
19 this?
20 A. I don't know how anybody learnt about it.
21 Q. Did you talk to the press?
22 A. No, I didn't.
23 Q. Did Mr. Boyle or Mr. Goodwin talk to the press?
24 A. I can't speak for them.

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- 1 Q. Did you guys want to go to the press to put pressure
2 on the Town?
3 A. No.
4 Q. So, it's your testimony neither -- any of you three
5 went to the press?
6 A. I don't know if they -- I know I didn't go to the
7 press. That's my response.
8 Q. Well, it's my understanding that at the IG's Office
9 the investigations are pretty closed and they don't
10 share anything. How is it that the newspaper found
11 out about some, quote/unquote, "investigation" in
12 August of 2001?
13 A. It was put out by a reporter named Elaine Allegrini
14 who lives in Plymouth. She spoke to Mr. Griffin, who
15 is in Dedham, who was the Town Manager that allowed
16 this to happen 15 years ago, and he spoke about the
17 Inspector General.
18 Q. How would he know that the Inspector General's
19 Office --
20 A. Because they came down and spoke to him in his
21 office.
22 Q. But you're saying a month later, after the August
23 2001 article, the Town approved of this, right?
24 A. Correct.

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- 1 Q. Including yourself voting?
2 A. That's correct.
3 Q. So, even though you went to the IG's Office in
4 January 2001, you're saying you voted in September
5 2001 to pass this bylaw?
6 A. I voted to pass it. And my personal feelings are,
7 that's all I can conjecture -- put together from what
8 happened, is that probably -- what I was told is that
9 the Inspector General indicated to the Town that they
10 needed to take corrective action, and they did.
11 Q. I'm a little confused. Because you say in your
12 complaint, paragraph 21 and 22 in Exhibit 1, that you
13 complained about Chief Pomeroy. Do you see that?
14 Take your time and read it.
15 A. (Witness perusing document) Yes.
16 Q. Am I reading that correctly?
17 A. Yes.
18 Q. You're now telling us that you not only complained
19 about Chief Pomeroy, but its effect on several other
20 officers, including Captains and retired officers; is
21 that your testimony today?
22 A. What happened -- I wasn't complaining about other
23 officers. What I was complaining about was as a
24 Department head, when he formulates a budget, okay,

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- 1 under our former government and our budgeting
2 process, the personnel bylaw did not address the
3 compensation that he was paying his Department -- him
4 and his Captains.
5 Q. But your complaint, at least back in January 2001,
6 was about Chief Pomeroy; it had nothing to do with
7 the other officers?
8 A. It was about the Department as a whole, as well as
9 Captain Botieri at that time, had received \$15,000 in
10 overtime monies and the personnel bylaw states
11 emphatically Captains do not receive overtime.
12 Q. You also -- when I asked you about whether or not you
13 wanted a criminal complaint issued, you said no; and
14 yet, in paragraph 22, you specifically say you were
15 concerned about inappropriate violation of State law,
16 do you see that?
17 A. Correct.
18 Q. And you were asking them to look into filing a
19 criminal complaint --
20 A. No.
21 Q. -- isn't that right?
22 A. Verbal agreements under Chapter 41, municipal
23 finance, are illegal. There are no such things as
24 verbal agreements for public employee compensation.

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- 1 Q. So, you're telling us today that your only concern
2 was that somebody would accuse you of improperly
3 dispensing Town funds; is that right?
4 A. I'm telling you that as a member of the Board, on
5 advice of counsel, and as a fiduciary responsibility,
6 as well as fairness to the individuals that were
7 retired under these conditions, the Town had an
8 obligation to correct the bylaw, to properly
9 facilitate and justify those compensations that were
10 given; and verbal agreements for public employee
11 compensation are not legal in Massachusetts.
12 Q. When you voted in favor of the amended bylaw, you
13 knew that in a sense you were wiping the whole slate
14 clean in September of 2001?
15 A. That's not true.
16 Q. Well, you tell me what you understood when you were
17 voting in September of 2001 to allow the Chief, the
18 Captains, the officers who were retired, to collect
19 under what you believed you were voting for?
20 A. They amended the bylaw to cover the appropriateness
21 in covering the monies. If the Town did not want to
22 recover monies, that was their prerogative.
23 Q. When you say "they," it included you, though?
24 A. No.

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- 1 Q. You didn't raise your right hand and vote aye?
2 A. That's not what I said.
3 Q. Well, you tell me what you voted for?
4 A. I voted for the amendment, for the bylaw, which would
5 have then properly put the appropriate governing
6 documents in place.
7 Q. Which included compensating the officers for the
8 things we've been discussing, the 30 percent Quinn
9 bill, the allowances, and the other items you
10 mentioned earlier today?
11 A. That's correct.
12 Q. So, in effect you were ratifying the monies you
13 received, you knew that?
14 A. Going forward.
15 Q. Right. And you knew that it filled in a gap and a
16 hole for prior officers, both retired and present,
17 who were receiving monies in good faith, because they
18 believed they were entitled to it; is that right?
19 A. That's a fair statement, yes.
20 Q. Now, you also told us just a few minutes ago
21 something about you had continual harassment up until
22 that point. Do you remember that, just a couple of
23 minutes ago?
24 A. Yes.

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- 1 Q. Who was harassing you up until January 22, 2001?
2 A. I was harassed on a regular basis. I was told by my
3 day Lieutenant, Kevin Fahy, and I was told by various
4 members, that they were out to get me.
5 Q. Who was out to get you?
6 A. The Chief and Captain Botieri.
7 Q. The Chief and Captain Botieri were out to get you?
8 A. Uh-huh. Yes. Yes, sorry.
9 Q. And who told you this? You said Kevin Fahy?
10 A. Kevin Fahy.
11 Q. He's one of the gentleman whose affidavit is next to
12 your complaint, Exhibit 1?
13 A. That's correct.
14 Q. He is a friend of yours?
15 A. He's a Lieutenant. I worked with him on the day
16 shift.
17 Q. He's a friend of yours?
18 A. Correct. I worked with him for 25 years.
19 Q. He told you that the day Lieutenant -- who was
20 that?
21 A. Kevin Fahy.
22 Q. That's not a separate individual, it's the same
23 guy?
24 A. The same guy.

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- 1 Q. Who else told you that?
- 2 A. I had various Sergeants tell me that, the grapevine,
- 3 everybody was saying you better watch your back.
- 4 They're out to get you.
- 5 Q. Why were they out to get you? Did you understand why
- 6 they were out to get you?
- 7 A. I believe they were out to get me because of this
- 8 issue and where it ended up in the Inspector
- 9 General's Office.
- 10 Q. So, let me understand this. You say the gentlemen --
- 11 Botieri, you said Chief Pomeroy, who else were out to
- 12 get you because of this issue that you went to the
- 13 IG's Office? Who else?
- 14 A. Well, I believe given Captain Botieri and the Chief's
- 15 position, they could -- they made it clear to other
- 16 people that, you know, we want to know everything,
- 17 anytime -- anything that I ever did.
- 18 Q. You had supervisors, correct?
- 19 A. Sure.
- 20 Q. Throughout your career?
- 21 A. Yup.
- 22 Q. And part of their duties were to make sure you were
- 23 doing your job?
- 24 A. That's true.

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- 1 Q. Whether that means covering a certain sector or
- 2 responding to calls, that was part of their
- 3 obligation, correct?
- 4 A. That's true.
- 5 Q. If you didn't do that, they were supposed to call you
- 6 on it; is that fair to say?
- 7 A. That's true.
- 8 Q. On a few occasions they did call you on it; is that
- 9 fair to say?
- 10 A. I would say that, yeah.
- 11 Q. So, what in particular besides these -- you said the
- 12 day Lieutenant, Kevin Fahy. What particular thing
- 13 happened to you that you say was a part of this
- 14 continual harassment?
- 15 A. Well, for example, they would -- I'll give you an
- 16 example. I put in for a vacation and I was off a
- 17 month before the 4th of July and I was off a month
- 18 after the 4th of July and the 4th of July was one of
- 19 my days off. I was away from my home and I had a
- 20 Sergeant show up at my front door and tell my wife
- 21 you have to call the station right away and then
- 22 leave. My wife was upset. She didn't know what
- 23 happened. She called me on the cell phone.
- 24 I called the station. Sergeant Rogers told me,

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- 1 the Chief ordered you in for the 4th of July. I
- 2 said, I'm already on vacation. I've been on vacation
- 3 for 30 days. I put it in 30 days before that. I'm a
- 4 senior man. He said you have to come in. I couldn't
- 5 disobey an order because I knew they would suspend
- 6 me. So, I had to go in.
- 7 I had plans for the 4th of July. I bought
- 8 tickets for a banquet on the 4th of July at the
- 9 Plymouth Yacht Club that I'm a member of. I spent
- 10 hundreds of dollars and I was unable to go. I had to
- 11 go into work at 5:00 on the 4th; otherwise, get
- 12 suspended. I went to work.
- 13 Q. Were you scheduled to work that day --
- 14 A. No.
- 15 Q. Just let me finish. And forgot to put in for that
- 16 day off?
- 17 A. No. It was my day off on my four and two schedule.
- 18 Q. Are you telling us today that you were not scheduled,
- 19 as part of your job, and just by some circumstances
- 20 forgot to coordinate that as a day off for
- 21 yourself?
- 22 A. I was not scheduled to work that day.
- 23 Q. And did you advise any of your supervisors of that?
- 24 A. I'll explain to you what I just said.

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- 1 Q. I understand what you said. My question was: Did
- 2 you advise any of your supervisors of this, that you
- 3 were not scheduled to work that day?
- 4 A. I was off a month before. I had put the time in. It
- 5 was approved. On my four to two schedule, the 4th of
- 6 July fell on one of my days off. I had vacation for
- 7 the month after the 4th of July. So, I was out for
- 8 basically almost two months.
- 9 Q. What year was this, by the way?
- 10 A. It was 2001.
- 11 Q. Okay. When you went into the office, did you talk to
- 12 anybody about this, any of your supervisors?
- 13 A. I never went to the office. I just went to work.
- 14 Q. Did you grieve this?
- 15 A. At that time what happened is that situation we
- 16 turned around and the Union realized how egregious a
- 17 situation it was. The Chief and the Union got
- 18 together, before the 4th of July, that I had to come
- 19 in and turned around and worked out a new formula and
- 20 policy. All that was contingent upon that he would
- 21 approve a different type of -- we went to what
- 22 they call a mandatory list, where they kept a tab on
- 23 it.
- 24 And after that, he said I'll go to this and I'll

THOMAS KELLEY

FEBRUARY 9, 2006

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1 allow you to do this, okay, because of a situation
2 like this, but I had to come in. The deal was off
3 unless I came in.
4 Q. I'm not understanding you, because I think you've
5 now said two different things. You were an active
6 Union member?
7 A. I was not a representative. I was a Union member.
8 Q. You were well aware -- it sounds like from today you
9 were well aware of all your rights?
10 A. Correct.
11 Q. And you knew when to grieve something, right?
12 A. I made my point to the Union, the Union brought it to
13 the Chief's attention.
14 Q. Did you --
15 A. Let me finish.
16 Q. Go right ahead.
17 A. I brought it to the Union's attention. I came in to
18 work. The Union then brought it to the Chief's
19 attention to say this is something that we have to
20 address and the Chief addressed it with them. We
21 came up with a new way for this type of coverage, but
22 said that clearly, the whole deal is off unless
23 Kelley comes in. I had to come in for my day. So, I
24 did.

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1 Q. You knew about this before you went in?
2 A. No.
3 Q. Did you grieve this -- my question was: Did you
4 grieve this with the Union, that coming in between
5 your vacation months?
6 A. I was told, Tom, if you grieve it, we'll lose this
7 opportunity to do something good, to make this work
8 in the future. So, I said, I'll come in. I wasn't
9 going to put the Union in that position.
10 Q. Eventually, for whatever reason, you agreed to go in
11 and you did?
12 A. I went to work.
13 Q. And then you took the rest of the month off after
14 that?
15 A. That's correct.
16 Q. What else besides this incident do you say was an
17 example of the harassment that you said you were
18 suffering prior to January 2001? And that's, by the
19 way --
20 (OFF THE RECORD)
21 MR. SILVERFINE: Back on the record.
22 Q. Mr. Kelley, you'll agree, by the way, that that
23 example, which we just discussed about the vacation,
24 was post-January 2001, what you just described,

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1 correct?
2 A. It was July 4th, 2001.
3 Q. And you'll agree with me that's after January,
4 2001?
5 A. Correct.
6 Q. If I could just go back to what you said earlier.
7 You said you had suffered from harassment previous to
8 January 2001. Could you tell me what harassment you
9 say you suffered prior to January 2001 when you went
10 on your visit to the IG's Office?
11 A. Prior to?
12 Q. Right. I'm just taking again -- what you told us
13 earlier, you said because of -- and I'm paraphrasing
14 now -- the harassment you suffered when you went to
15 the IG's Office with Dana and Paul. So, I'm asking
16 you what harassment you say you suffered prior to
17 your January visit of 2001 to the IG's Office?
18 A. Well, there was constant examples of when I had to
19 go to -- like when I had meetings. I had to log in,
20 log out. If I was -- Botieri would ask, if he saw
21 the car here or there, he was constantly calling
22 Kevin saying, why's Kelley doing this, why's Kelley
23 doing that. And I had legitimate questions -- or
24 legitimate areas to be.

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1 My reports, simple reports, stuff that --
2 something that was a minor mistake, I was constantly
3 pulled on the carpet for it. I was constantly -- a
4 lunch break. If I was five minutes over -- you were
5 on the air all the time anyway, I was always on
6 portable. It was why didn't he answer the radio or
7 something like that. I constantly would get e-mails
8 on stuff and I would then justify it or have already
9 done that and not hear nothing from it. They were
10 waiting for me -- anything. They were biting at the
11 lip to grab anything that I did wrong.
12 Q. In terms of you said, quote, "pulled on the carpet,"
13 who would do that?
14 A. Kevin would get a call from Botieri, find out this,
15 find out that type of thing. And Kevin would call me
16 and say -- and then I would have a legitimate answer
17 for it, and then that would be the end of it. It
18 wouldn't materialize into anything.
19 Q. So, you weren't actually called into the office, your
20 supervisor took care of it with you?
21 A. It would be -- like I said, it would be the simplest
22 little things. He might have the -- or like the
23 computers in the car, when they first got them, would
24 shut off and they wouldn't go back on, they had

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1 trouble with that. He would call down to Kevin and
2 say, Kevin, Kelley doesn't have his computer on. And
3 he would say, well, the computer doesn't work today,
4 or there's something wrong with it. I'd bring the
5 car in and they'd fix it. We had trouble with them,
6 the way they were put into the cars.
7 Q. My understanding of the term "pulled on the carpet,"
8 is actually somebody comes into the office and you
9 have a discussion with the officer about an event.
10 You weren't actually called on the carpet, you're
11 saying your supervisor had a complaint from his
12 supervisor about check with Kelley on why he wasn't
13 answering the radio, words to that effect?
14 A. Every minor little thing.
15 Q. I understand what you're saying, but you're actually
16 not being pulled on the carpet. You're saying --
17 A. I was never disciplined, or reprimanded, or written
18 up.
19 Q. You're saying your supervisor called up and said the
20 Captain, for lack of a better term, is checking on
21 you to see why you weren't answering the radio?
22 A. The Captain called down and said.
23 Q. Right. And you said --
24 A. Correct.

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1 Q. -- you weren't actually called into the Captain's
2 office or the Chief's office and they said,
3 Mr. Kelley, you know, you're not answering your
4 radio, right?
5 A. No.
6 Q. In terms of logging in and logging out, were you
7 under an obligation to log in and log out at certain
8 times?
9 A. Well, when I first got -- logging in and logging out,
10 what do you mean by that?
11 Q. Again, I'm just going by what you told us a few
12 minutes ago. You said I had to attend meetings and I
13 was obligated to log in and log out.
14 A. Correct. I had no control over the meetings; plus,
15 we had seminars and various responsibilities with the
16 retirement system. If I had to work, I'd go to a
17 meeting, they would log my time, log me coming back
18 into the building. They would call over to the
19 office and say what time did the meeting end. I
20 would go from the meeting right to the police
21 station, but they would have called over and said
22 what time did he leave that building to the police
23 station, which is probably, depending on traffic,
24 maybe a ten-minute ride, that type of stuff, which I

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1 would hear from people saying they're calling on you
2 again.
3 Q. My question, I guess, was: Were you obligated as an
4 officer when you were off duty and going to
5 retirement meetings, for instance, to log out?
6 A. I did tell them where I was, yes.
7 Q. I'm saying, in other words, you were no longer an
8 active police officer?
9 A. Oh, yeah.
10 Q. I'm in a meeting, I'm no longer patrolling the
11 streets of Plymouth?
12 A. Correct.
13 Q. Would you agree with me you had an obligation to log
14 out, so they would know you were at a retirement
15 meeting and not on duty?
16 A. That's correct.
17 Q. How big a Department manwise was Plymouth, let's say,
18 for instance, in 2001? How many members were there?
19 A. I think about a hundred.
20 Q. And at any single shift that you would serve on,
21 about how many officers were on duty?
22 A. Well, there were two manning postures. By that I
23 mean, they had a summer manning posture and a winter
24 manning posture, because of the seasonal work and the

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1 Town's size. I don't know what the posture is now,
2 but it went down to a certain level of manpower that
3 you needed to be on.
4 Q. Would you agree with me that the Police Department
5 ought to know how many officers are on duty in case
6 they have staffing issues; is that fair to say?
7 A. That's true.
8 Q. So if, for instance, an officer has to log off to do
9 "X," they ought to know if they need to fill a
10 sector; is that fair to say?
11 A. That's fair to say.
12 Q. So, in this case -- and, again, I understand you were
13 a Retirement Board member at the same time you were a
14 police officer for a period of time, right?
15 A. Yes.
16 Q. And they just asked you if you're going to go to a
17 meeting, log out and then log back in when you're
18 done?
19 A. Correct. They also instituted a chargeback from the
20 Department to the retirement system.
21 Q. We'll get to that in a minute. For right now I'm
22 just asking about logging in and logging out.
23 A. Yes.
24 Q. And again, in your complaint, Exhibit 1, paragraph

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1 23, page 5, if you turn it over. You wrote, "Town
2 meeting voted to ratify the past inappropriate
3 compensation and authorization of funds to Pomeroy."
4 Do you see that?
5 A. Uh-huh. Yes.
6 Q. And your focus in your complaint is on Chief Pomeroy,
7 do you see that?
8 A. Yes.
9 Q. You're telling us now, under oath, that you voted to
10 ratify compensation and funds to not only Chief
11 Pomeroy, but to certain Captains and retired officers
12 as well?
13 A. That's correct.
14 Q. During the Town meeting in which you participated,
15 you also voted to ratify, as you say in paragraph 23,
16 the past inappropriate compensation and authorization
17 of funds to Chief Pomeroy?
18 A. No, I didn't say that. I said what we did at the
19 Town meeting is we voted to amend the bylaw.
20 Q. I'm just reading what you wrote here. You say
21 subsequently, in paragraph 23, "Town meeting voted to
22 ratify the past inappropriate compensation and
23 authorization of funds to Pomeroy." I'm assuming
24 that's Chief Pomeroy, right?

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1 A. Yes.
2 Q. And you yourself voted to ratify the past
3 inappropriate compensation and authorization of funds
4 to Chief Pomeroy?
5 A. That's what it says.
6 Q. Again, I'm reading your complaint. Right?
7 A. Very simply, we voted to amend the bylaw. Now, if it
8 covered past performances, past appropriations, then
9 I guess it must have. I wasn't --
10 Q. Well, you know it does. As you sit here today, you
11 knew it did then and you know it does today?
12 MR. ARMSTRONG: Objection. Don't be
13 argumentative to my witness.
14 MR. SILVERFINE: Now you're being
15 argumentative with me. If he understands the
16 question, he can answer it.
17 MR. ARMSTRONG: Don't tell him what he
18 understands.
19 MR. SILVERFINE: Don't point your finger at
20 me.
21 MR. ARMSTRONG: Ask a question.
22 MR. SILVERFINE: I did ask a question.
23 MR. ARMSTRONG: Okay.
24 MR. SILVERFINE: Don't point your finger at

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1 me. If you have an objection, you can state it.
2 MR. ARMSTRONG: Maybe we should take a
3 break.
4 MR. SILVERFINE: If you want a break, we
5 can come back in a half-hour and continue.
6 MR. ARMSTRONG: I don't think you're being
7 courteous to this witness.
8 MR. SILVERFINE: Oh, sir, that's absolutely
9 untrue, and you know that's untrue. Just because
10 I've phrased a question that you don't like the
11 answer to, doesn't mean I've been discourteous.
12 Q. Mr. Kelley, have I been discourteous to you at
13 all?
14 MR. SILVERFINE: Well, let's stay on the
15 record because I haven't been discourteous to your
16 witness whatsoever, sir.
17 MR. GALLITANO: In all fairness, your last
18 comment, you said, you know what you're saying. And
19 he didn't --
20 MR. SILVERFINE: Excuse me.
21 MR. GALLITANO: That's all it was, the tone
22 that you took.
23 MR. SILVERFINE: You guys are, first of
24 all, double teaming me now.

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1 MR. GALLITANO: I'm not double teaming
2 you.
3 MR. SILVERFINE: You are double teaming.
4 MR. GALLITANO: You said you want to talk
5 about it, so we'll talk about it.
6 MR. SILVERFINE: And he can object to the
7 form of the question, which is perfectly within his
8 rights, but he's being argumentative to me.
9 MR. GALLITANO: But that wasn't a question.
10 MR. SILVERFINE: If Mr. Kelley can't answer
11 the answer, and he's doing a terrific job, he's going
12 to let me know.
13 MR. GALLITANO: Jeremy, that wasn't a
14 question. If you read it back, you say you know what
15 you're saying. That wasn't a question. That looks
16 like an accusation.
17 MR. SILVERFINE: Let me finish the question
18 before we break.
19 Q. Back in September of 2001, did you know you were
20 voting to ratify, as you say in your complaint, past
21 inappropriate compensation and authorization of funds
22 to Chief Pomeroy?
23 A. I voted at a Town meeting to amend the personnel
24 bylaw to cover the compensation paid; and if that was

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1 the net result, I guess that's what it was. I didn't
2 really go sit back with the Town Clerk and say what
3 did we do? We amended the bylaw, which was my
4 intention, so that it would be clearly laid out in a
5 paper trail for the funds being paid.
6 Q. And that included whatever you want to call it,
7 appropriate or inappropriate, past compensation and
8 authorization of funds to Chief Pomeroy, the
9 Captains, and the retired officers?
10 A. If that's what it meant, I guess that's what it
11 meant. I didn't --
12 Q. Did you know back in September 2001 what that
13 meant?
14 A. You know, I really don't know if it was -- that was
15 the net result, but I know it amended the bylaw and
16 that's what we did.
17 Q. And you knew it covered past compensation for the
18 monies that they --
19 A. I honestly can't take the position of knowing
20 exactly what that vote would have -- I know we
21 amended the bylaw to cover the monies that were being
22 paid; and that was my intent.
23 Q. Are you saying you did not know, when you were voting
24 at the Town meeting, what you were voting for in

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1 terms of compensation of funds to Chief Pomeroy, the
2 Captains, and other retired officers?
3 A. I knew what I was voting for. I just didn't know if
4 it had any retroactivity to it and what that result
5 would be with, say, the Clerk's Office and how he
6 would present it. That wasn't my intention. I
7 didn't even think about it. I know what I was voting
8 for.
9 (LUNCH BREAK FROM 1:20 TO 2:15 P.M.)
10 MR. SILVERFINE: Back on the record.
11 Q. Mr. Kelley, would you agree with me that by
12 September 2001, when you voted at the Town meeting
13 relative to the compensation that we've been talking
14 about earlier today, that that was the very thing you
15 had gone in and complained to the IG's Office about
16 in January of 2001?
17 A. When we went into the Inspector General's Office in
18 2001 January, my concern was that the monies that
19 were being paid were not in the governing document,
20 which in this case would have been the personnel
21 bylaw.
22 Q. No. What I'm asking you is, at least by September
23 2001, everything that you had gone and complained
24 about to the IG had been ratified by the Town?

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1 A. In September 2001 there was a Town meeting -- yeah,
2 it was in the fall, I'd say. There was a fall Town
3 meeting, which made the appropriate changes in the
4 bylaw.
5 Q. So, again --
6 A. That's my statement.
7 Q. Right. I'm just saying -- I'm just following your
8 complaint along. And so, I'm just asking you, by
9 September what you had complained about initially --
10 A. The bylaw was corrected.
11 Q. Right. And as part of the Town meeting, you had
12 voted to ratify it?
13 A. Yes.
14 Q. Let's go on to Exhibit 1, paragraph 24. You wrote
15 that Chief Pomeroy was well aware that you had
16 reported him to the IG's Office. On what basis do
17 you make that statement?
18 A. I had a discussion with Eleanor Beth. I wrote her a
19 letter specifically outlining -- I wanted to sit down
20 and have a meeting with her and discuss the
21 harassment that I received on the job. This was
22 around May -- I mean, around July. I then gave her a
23 letter and she said she didn't have time or she
24 didn't want to discuss issues. I then reduced my

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1 concern to writing and I presented that to her at her
2 office. And in that letter, I indicated that I had
3 gone to the Inspector General's Office on these
4 matters.
5 Q. Do you have a copy of that letter somewhere in your
6 files?
7 A. I believe it's in the documents that we produced to
8 you.
9 Q. I'll double check, but you think the letter -- you're
10 referring to the one letter telling Eleanor Beth,
11 referring to the IG's Office, is in the production?
12 A. I believe it's in the production.
13 MR. SILVERFINE: And if it's not, we'll
14 make arrangements to get it.
15 MR. GALLITANO: We'll get you a copy.
16 MR. SILVERFINE: Fair enough.
17 Q. Do you have any independent understanding of how it
18 is that Chief Pomeroy would know that you went to the
19 Inspector General's Office? I understand you're
20 saying you sent a letter to Eleanor Beth, but did you
21 cc the Chief or anything like that?
22 A. No, but I did in e-mails that I have to the Union.
23 And, I believe I sent one to Captain Botieri
24 indicating that one of them was my treatment of being

EXHIBIT A CONTINUED

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1 ordered in on the 4th of July in '01. I wrote an
 2 e-mail, I believe, to that effect, indicating to
 3 Captain Botieri that this was an example of the
 4 harassment that I have been receiving as a result of
 5 going to the Inspector General's Office on this
 6 issue.
 7 Q. And Exhibit 1, again, we're going through the
 8 paragraph, paragraph 25. You said in this that
 9 Pomeroy knew your medical conditions were preexisting
 10 and would place you in harm. Are those the same
 11 medical conditions you mentioned earlier, Lyme
 12 disease and Meniere's disease?
 13 A. I had those sicknesses documented in the doctor's
 14 notes that I had previously given to him.
 15 Q. You were still on the job at that point in time?
 16 A. Yes.
 17 Q. How is it that Chief Pomeroy would know that you
 18 would be placed in harm with whatever medical
 19 conditions you've now told us about?
 20 A. Well, one of the symptoms of both of those particular
 21 illnesses is dizziness. It can affect blood
 22 pressure. You can have fainting spells, that type of
 23 thing, where you lose your ability to function. As
 24 far as I know, you have a tough time breathing, you

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1 the doctor and make an appointment and he'd look at
 2 my medication and look at -- it's a very difficult
 3 disease to get your arms around.
 4 Q. But you were still prior to May 25th, 2003 on the job
 5 as a full-time officer?
 6 A. Correct.
 7 Q. You hadn't put in for any disability retirement or
 8 other type of retirement prior to May 25th, 2003?
 9 A. No. I was just trying to make a living. I have two
 10 kids going to college.
 11 Q. I'm not debating that. I'm just asking.
 12 A. No, I didn't.
 13 Q. In other words, as of May 25th, whatever you were
 14 suffering from didn't prevent you from going to work
 15 and serving as a police officer with all the
 16 requisite functions of a police officer?
 17 A. I went to work, yes, I did.
 18 Q. Are you saying you didn't perform the essential
 19 functions of the job?
 20 A. I did.
 21 Q. That's what I'm asking. So, at least up until
 22 May 25th, 2003, you performed the essential
 23 functions, your duties as a police officer for the
 24 Town of Plymouth?

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1 know, because some people I've been told, and the
 2 doctors said, it's because of the Meniere's, how they
 3 really don't know how it really effects people, but
 4 he has found out that fresh air, people outside, it
 5 has a big change.
 6 He asked me about my -- my doctor asked me
 7 about -- you know, salt is issue, but he also said
 8 about, you know, conditions as far as fresh air has
 9 sometimes a way of mitigating the symptoms and I've
 10 found that to be true. That, if I was able to get
 11 fresh air and able to --
 12 I mean, I used to run the air conditioners
 13 sometimes in the police car in the summertime because
 14 it would get hot and I would feel better. At times I
 15 would get the dizzy spells so bad, I'd have to go
 16 home. And like I said, that was documented in that
 17 doctor's note.
 18 The sick letter that I got from the Chief. It
 19 said you didn't complete your shifts several times,
 20 I think it was seven or eight in that period, and I
 21 attributed it to those times I had been taken home by
 22 another officer, literally driven home, and then
 23 another car would pick him up because I had these
 24 attacks and I didn't know what -- then I would call

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1 A. Correct.
 2 Q. Don't take offense to this. Were you overweight at
 3 the time on May 25th?
 4 A. I've always been between -- I started the job
 5 probably at 250 and I was probably about 265, 270.
 6 I've always been that size my whole life.
 7 Q. Occasionally, it fluctuates a little heavier? I
 8 noticed one of your reports mentioned by your lawyer
 9 the other day, he said something about 275 pounds?
 10 A. No. The doctor put me down as five-four instead of
 11 six-four.
 12 Q. Right. The weight said something like 275 pounds and
 13 I think your lawyer made a reference to, you're not
 14 five-four.
 15 MR. GALLITANO: Just for the record, that
 16 wasn't me that said that, that was Michael Sacco's
 17 testimony.
 18 MR. SILVERFINE: Right.
 19 A. It's in the record. I don't know exactly what it
 20 was. It might have been an approximate. I know they
 21 didn't weigh me at the medical panel.
 22 Q. Let's turn to page 6 on Exhibit 1, paragraph 30. You
 23 indicate in paragraph 30, the failure to screen
 24 members of the police force and prevent you in

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- 1 particular from participating in what's called the
 2 Columbine drill was retaliatory in nature. Could you
 3 tell me what you mean by that?
- 4 A. Well, I believe the Chief had enough documentation in
 5 the files and he had an obligation, given the
 6 intensity that he knew about these drills, and the
 7 other potential injuries and the intensity of this
 8 drill, that he should have at least taken those into
 9 consideration before he ordered everybody carte
 10 blanche to appear.
- 11 Q. I think I asked you this earlier. You said the
 12 entire Police Department had an order to --
- 13 A. Correct. The way orders are put out, if I can
 14 clarify that for you. They're put out -- it doesn't
 15 check off this guy can't go. It said these are the
 16 following dates you will go. It's put in a glass
 17 case and that's what we operate from.
- 18 My understanding is that everybody participated,
 19 maybe other people didn't, but I don't know. I don't
 20 know that.
- 21 Q. And this was a -- I think we heard mentioned, this
 22 was a drill put on by the State Police?
- 23 A. This was a drill put on by the State Police, correct.
- 24 Q. And other departments also participated in it besides

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- 1 latitude to make it as real as possible without
 2 trying to get somebody hurt, which I don't know how
 3 you do that, it does hurt, but that was the intent.
- 4 We had masks on, we had fire alarms going, we
 5 had radios blaring, we had our radios blaring. We
 6 had five people on a team. They had live fire to
 7 shoot at us. We had live fire to shoot at them.
- 8 Q. This was something to recreate an event that could
 9 happen on the job, right, that's the purpose of the
 10 drill?
- 11 A. This was a drill to coordinate agencies in the event
 12 that there was a hostage situation. If you were the
 13 first responder, you would know as a result of the
 14 Columbine incident in the western part of the
 15 country. They came up with a -- they wanted to teach
 16 all your first responders, then your different
 17 specialized teams might come in after that, but that
 18 first initial response, they didn't have to have
 19 people in positions that the other people didn't know
 20 where they were or weren't on the same plane when it
 21 came to coordinating efforts, clearing buildings.
 22 They wanted to try to develop a protocol where we're
 23 all on the same plane.
- 24 Q. You wrote this was retaliatory in nature. And then,

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- 1 Plymouth?
- 2 A. Not this particular drill. This particular drill was
 3 just Plymouth.
- 4 Q. When you say he knew about the intensity of the
 5 drill. How do you know the Chief knew about what you
 6 describe as the intensity of the drill?
- 7 A. From what I picked up from talking to Paul Boyle,
 8 the Chief was well aware of all the circumstances
 9 surrounding it. He's a member of the Mass. Police
 10 Chiefs' Association. I think he's the Southeastern
 11 Massachusetts president. So, I'm sure he was well
 12 aware of what the program was and what it entailed
 13 before he authorized everyone to go.
- 14 Q. When you say "the intensity," you're referring to the
 15 injuries that Mr. Boyle had raised with him earlier,
 16 including the thing with the gas mask?
- 17 A. By the intensity of the drill I'm referring to the
 18 running, firing, wearing a gas mask. It was a
 19 live -- as live as you can get in a manner where we
 20 could physically -- the State Police were considered
 21 the bad guys and we had to hunt them down in the
 22 building.
- 23 You could physically grab them, put them down,
 24 other than short of, you know -- you were given the

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- 1 you indicate in the next paragraph, paragraph 31,
 2 it's because you reported Pomeroy to the Inspector
 3 General's Office, do you see that?
- 4 A. Yes.
- 5 Q. So, you're alleging now because you reported Pomeroy
 6 to the IG's Office, that he made you go through the
 7 drill; is that right?
- 8 A. That's right.
- 9 Q. But you said to us earlier that you weren't only
 10 reporting on Pomeroy, you were reporting on all the
 11 other officers, Captains, retired officers where this
 12 applied to, correct?
- 13 A. That's not correct.
- 14 Q. So, you were only reporting on Pomeroy's use of the
 15 funds; is that right?
- 16 A. The Department head is ultimately responsible for the
 17 payroll.
- 18 Q. And you're saying as a result of you complaining
 19 about just Pomeroy, he made you go through these
 20 drills?
- 21 A. I believe that's exactly what he had in mind.
- 22 Q. And that's specifically, as your say in your
 23 complaint, because you went to report him to the IG's
 24 Office; is that right?

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- 1 A. That's correct.
 2 Q. And that's even though you voted about nine months
 3 later to ratify the very thing you went to complain
 4 on?
 5 A. No, I didn't. Nine months later? You've got the
 6 wrong year.
 7 Q. Well, okay. You told me earlier today, you said
 8 January 22nd, 2001 you went to IG's Office?
 9 A. That's correct.
 10 Q. You then told us under oath that in September 2001
 11 you voted to ratify the funds that were previously
 12 not apportioned to the Quinn bill allowances, that's
 13 approximately nine months later?
 14 A. No, it isn't. This incident happened in 2003.
 15 Q. Listen to my question. I'll get there in one
 16 second. I'm not tricking anyone. I'm going through
 17 what you're telling me. You said -- I'll walk
 18 through it again -- on January 22nd, 2001 you went to
 19 the IG's Office to complain about Chief Pomeroy?
 20 A. That's correct.
 21 Q. You then told us under oath that in September of 2001
 22 at a Town meeting, you voted to ratify the very thing
 23 you had gone to the --
 24 A. Correct.

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- 1 Q. So, just to stop right there. January to September
 2 is roughly eight, nine months?
 3 A. I misunderstood the question, I'm sorry.
 4 Q. That's why I'm walking you through it, so there's no
 5 misunderstanding.
 6 A. Okay.
 7 Q. You're then saying, just so I understand this,
 8 roughly almost two years later, a little under two
 9 years later, he's retaliating against you for
 10 reporting him in January 2001 to the IG's Office; is
 11 that right?
 12 A. That's correct. All during that period after that
 13 and through all that area there, he was -- I was
 14 constantly being harassed by various people in the
 15 Department. I was told -- they were saying the Chief
 16 told them to do this, or Botieri told them to do
 17 this, and they would say to me, you know, they're
 18 just picking on you. They're just going off on you
 19 because of what you did.
 20 Q. Let's break that down. You said various people,
 21 which people harassed you and which people told
 22 you?
 23 A. I had Lieutenant Fahy tell me that.
 24 Q. What did Fahy tell you?

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- 1 A. Exactly that. He wrote me an e-mail.
 2 Q. Saying what?
 3 A. Saying they're after you. I've had Botieri in my
 4 office screaming and hollering about you. They want
 5 to find out anything and everything. In his
 6 affidavit he states --
 7 Q. Is that the e-mails, have you produced that as part
 8 of your package?
 9 A. I think you could have a few of them in the discovery
 10 there.
 11 Q. You've produced all the e-mails relative to this?
 12 A. All that I could possibly have.
 13 Q. Who else besides Lieutenant Fahy?
 14 A. I was told by other officers.
 15 Q. I need names.
 16 A. I was told by Officer Boyle, Goodwin. You could put
 17 anybody that worked on the day -- okay, put all the
 18 men on the day shift.
 19 Q. I'm asking you. I don't want to put words in your
 20 mouth. You tell me who told you and what they told
 21 you? For instance, what did Boyle tell you?
 22 A. He told me they were after you, to watch your back at
 23 any point in time.
 24 Q. What did Goodwin tell you?

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- 1 A. The same thing.
 2 Q. But you say they harassed you, who harassed you and
 3 what did they do? When someone says to watch your
 4 back, that's a caution. That's not harassment, do
 5 you agree?
 6 A. It was a threat is what I was told.
 7 Q. When Officer Boyle told you watch your back, he
 8 wasn't threatening you?
 9 A. No, that he was hearing it from various sources.
 10 Q. Who actually harassed you?
 11 A. The harassment was nitpicking every small little
 12 item. I believe one time -- I'll give you an
 13 example. I wasn't on a lunch break and Chief Pomeroy
 14 called down to Mike Burke, who was on the desk at the
 15 time, told somebody else to -- I don't know who.
 16 They had to relieve the desk. They drove down to the
 17 Cedarville Fire Station and somebody -- or somehow
 18 they thought there were two police cars there and one
 19 of them was mine and I was eating lunch when I
 20 shouldn't have been. And it wasn't me at all. It
 21 was another officer with the Fire Department, because
 22 they use our old police cars for inspectional
 23 services.
 24 And in fact, when Sergeant Burke pulled in, I

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1 was on the road. And then, I met him there and I
 2 said, what are you here for? He goes, well, the
 3 Chief got a call, ordered me down here to get you.
 4 And I said, well, I'm not here. That's a fire car.
 5 That second car was a fire car. They used the white
 6 and red lights. And I said, hey, it wasn't me. It
 7 wasn't me.
 8 Q. So, what happened as a result of that?
 9 A. Nothing.
 10 Q. What other incidents are you referring to?
 11 A. There was one time where Captain Botieri called and I
 12 had to write a little report about it. It was an
 13 incident where I was off -- I was just finishing
 14 lunch and there was a call that Dennis Hassan went on
 15 where it was a violent fight of a husband and a wife
 16 on a road up in the northern section of Town, in
 17 Manomet, and we were the only two cars. I heard the
 18 call, I started making my way to the car. I got on
 19 the -- when I got in the car, I took off. I was
 20 heading up there, because I knew I'd be his only
 21 backup, because he jumped out of the car and said
 22 send me a backup right away. I immediately,
 23 instinctively, being on the job almost 25 years,
 24 jumped in the car and started that way. And when

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1 When you're on the way to the scene, you're on the
 2 way. It's assumed you're on the way and you're
 3 there.
 4 Q. But my question is: Did Lieutenant Fahy chastise you
 5 for just not reporting your location?
 6 A. No, he didn't chastise me.
 7 Q. What did he do?
 8 A. He said, Tom, you've got to give your location. I
 9 know it's baloney. You were on the way and you've
 10 been doing what you've been doing for many years.
 11 It's just they're picking on you. They're going for
 12 anything they can get.
 13 Q. Is there a requirement in the policies and procedures
 14 you're supposed to give location?
 15 A. Yes. Again, I emphasize, when you have a situation
 16 like that --
 17 Q. I'm just asking if there is a policy and procedure?
 18 A. Yes, there is.
 19 Q. And you didn't follow that?
 20 A. At that time I was more concerned with keeping the
 21 air clear for Officer Hassan to give other
 22 information.
 23 Q. So, it's fair to say you didn't follow that in that
 24 particular situation?

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1 they say Car 5, I said, I'm on the way, because
 2 there's been many a times where people talk minutia
 3 on the radio and an officer will be calling for help
 4 because he's either been hurt or something disastrous
 5 was happening.
 6 I drove all the way up there, got there,
 7 assisted Officer Hassan. We made an arrest of a
 8 violent individual and I was called on the carpet for
 9 saying I'm on my way by Botieri.
 10 Q. So, you were called into his office this time?
 11 A. I was called into Kevin's office and he said you
 12 didn't give your location.
 13 Q. Who is Kevin?
 14 A. Kevin Fahy.
 15 Q. Lieutenant Kevin Fahy?
 16 A. Yes.
 17 Q. He's a friend?
 18 A. He was the Lieutenant.
 19 Q. He was your shift commander?
 20 A. That is correct.
 21 Q. Are you supposed to give your location?
 22 A. Yes, you are, but in a situation like that, time and
 23 air travel, okay, when a situation is happening
 24 like that, okay, you don't tie up the air with talk.

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1 A. It's not fair to say.
 2 Q. So, you gave your location?
 3 MR. ARMSTRONG: I want to object because I
 4 think the deposition is getting argumentative now.
 5 Q. Did you understand my question, sir?
 6 A. I understood your question.
 7 Q. So, did you give your location?
 8 A. I didn't give my location.
 9 Q. What other incidents of harassment can you cite?
 10 A. Kevin called me into the office one day and said --
 11 Q. Forgive me?
 12 A. Kevin Fahy, Lieutenant Fahy.
 13 Q. Thank you.
 14 A. He called me in and said you were out the other day,
 15 I think I was doing radar for a while, and in one of
 16 my citations I didn't put down the date even though
 17 it was a warning.
 18 Q. It was a what?
 19 A. It was a warning. And I said, okay, Kevin. I'll
 20 make sure I do that the next time. And he said that
 21 Botieri called him on that.
 22 Q. I'm sorry, who did?
 23 A. Botieri.
 24 Q. That is the Captain?

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- 1 A. Yes.
- 2 Q. Is there a requirement that you're supposed to put a
- 3 date on the citation?
- 4 A. Yes, there is.
- 5 Q. Is it fair to say that not putting the date on the
- 6 citation can be a fatal flaw in the citation if --
- 7 A. Not on a warning, because warnings don't have any --
- 8 they don't have any -- they're not -- you don't go to
- 9 court on a warning. A warning is exactly what it is.
- 10 It's a written account of me stopping you, saying you
- 11 were going too fast, or you took a left turn and you
- 12 write it out for the protection of you and me, so
- 13 someone doesn't say that we're stopping you for no
- 14 reason at all. You write out the person's name,
- 15 address. You give them a warning for going, say,
- 16 like five miles over the speed limit.
- 17 Q. Can't a warning be brought back up if something else
- 18 happens, though?
- 19 A. No. Not that I'm aware of.
- 20 Q. It's your testimony you're not aware of that?
- 21 A. No.
- 22 Q. And you're not aware of any citation that doesn't
- 23 have a date, it can be a fatal flaw if the citation
- 24 goes to court?

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- 1 A. I don't think -- depending on the case, I don't think
- 2 that would be true.
- 3 Q. You wrote in paragraph number 32 that Pamela Nolan's
- 4 denial of your 111F benefits was also retaliatory.
- 5 What's the basis of fact for that?
- 6 A. I had waited for almost a year talking with
- 7 Mrs. Flynn and trying to get an explanation of why
- 8 they didn't pay me as well as a full explanation.
- 9 Alls I got from her was two lines, I agree with --
- 10 there's nothing in -- I agree with the Chief's
- 11 decision. There's nothing here to make me overturn
- 12 it; and that's all I got.
- 13 Q. In Section 33, paragraph 33, again, the retaliation
- 14 you're referring to is the denial of your vacation
- 15 time instead of sick time; is that fair to say?
- 16 A. No, it's not fair to say.
- 17 Q. Tell me what is the --
- 18 A. It encompasses the entire number of years of
- 19 harassment that I put in after reporting him to the
- 20 Inspector General's Office.
- 21 Q. So, what else, after January 22nd, 2001, do you say
- 22 happened that you haven't told us about already?
- 23 A. Like I said, the constant nitpicking went on.
- 24 Constantly, I'd have -- if I had vacations, they

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- 1 would be with coverage. No matter what it was, I'd
- 2 have those slips put in there. Even though I was a
- 3 senior man, I wouldn't get them back, or -- I
- 4 couldn't make plans. Constantly, you know, if there
- 5 was something wrong with the computer in the car, I
- 6 would have somebody say go put your computer on.
- 7 Then, I'd say the computer was on and there's a
- 8 problem with it, and then they'd find a slip and say,
- 9 oh, yeah, it needs to be fixed.
- 10 Q. What else?
- 11 A. Things of that nature.
- 12 Q. Anything else?
- 13 A. No.
- 14 Q. You wrote in Section 35 something about benefits for
- 15 the 16 years he would have served. How did you
- 16 arrive at that number, 16 years?
- 17 A. Well, as it stands, I don't -- I left the job when I
- 18 was 48-and-a-half, I believe, or just 49. I could
- 19 have worked until I was 65. I only receive 72
- 20 percent or 73 percent of my salary and I believe the
- 21 math adding that up came to \$220,000.
- 22 Q. So, what you're saying is, just so -- I'll paraphrase
- 23 it. You're saying absent that incident, you would
- 24 have served 16 more years?

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- 1 A. I could have potentially stayed on the Department
- 2 until I was 65 years old.
- 3 Q. And you'll agree with me that's a speculative number;
- 4 we don't know what would happen God willing?
- 5 A. What other way do you phrase it?
- 6 Q. I'm just asking how you get that number?
- 7 A. I can't predict.
- 8 Q. You're basing the number on the difference between
- 9 what you are receiving and would have received; is
- 10 that fair to say?
- 11 A. That's fair to say, yes.
- 12 Q. In paragraph 37 on page 7 you indicate there's a
- 13 failure to screen. What do you say that the Chief in
- 14 the Town of Plymouth should have done in this
- 15 situation?
- 16 A. Well, I believe that given the intensity of the drill
- 17 and the knowledge that he had of it, he could have
- 18 taken the time to put together some type of screening
- 19 program, because he had all the information on my
- 20 case and anybody else's, to look at how this would
- 21 affect the officers ourselves.
- 22 The reason I make that comment is that in some
- 23 Departments, not some Departments -- like in the
- 24 State Police, they have specific or different

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- 1 departments, they have a specific team that goes into
 2 these hostage things, they're specifically training
 3 constantly. They physically train all the time;
 4 that's all they do. That's in particular in the
 5 State Police.
 6 They have a strike team that comes out. Some
 7 bigger, bigger departments have it and it's a
 8 specialized unit. They do physical training, they do
 9 tactical training, and then they do mental training.
 10 We never get any of that.
 11 Q. Wasn't this part of that training that you're
 12 referring to, isn't this drill part of that training
 13 that you say you didn't get?
 14 A. What I'm saying is that the preconditioning of it to
 15 compete at that level, it would be like me and you
 16 trying to go against the NFL and play inline.
 17 Q. Did you have to meet any kind of minimum standard,
 18 physical requirement for the job?
 19 A. 30 years ago.
 20 Q. And you didn't get re-examined every year by a
 21 physician?
 22 A. Never.
 23 Q. So, the first time you have to meet a minimum
 24 physical exam is at the time you entered the job?

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- 1 A. Yes.
 2 Q. Did you grieve any part of this incident up until the
 3 time of your disability retirement on September 8th,
 4 2003? Did you file any kind of grievance?
 5 A. No.
 6 Q. And just so I understand, in this count, which on
 7 pages 7 and 8, Count II of your complaint, again, you
 8 allege that the acts done in having you participate
 9 in this drill were intentional based on the fact that
 10 you went to the IG's Office; is that right?
 11 A. That's correct. What page are you on now? Are you
 12 on 8 or 7?
 13 Q. Page 8, the bottom of Count II, I'm just reading
 14 along.
 15 A. Yes.
 16 Q. And again, on page -- I'm still on page 8. On Count
 17 III, paragraph 46, you indicate your rights were
 18 violated and no other member in a similar position of
 19 the Department had been treated in such a fashion.
 20 Could you explain to me what you mean by that?
 21 A. Well --
 22 MR. ARMSTRONG: I'm sorry, where are you
 23 right now?
 24 THE WITNESS: On page 8, paragraph 46.

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- 1 A. That's correct.
 2 Q. And after that, you didn't have to pass an annual
 3 physical exam or an okay by a doctor?
 4 A. Absolutely not.
 5 Q. In paragraph 38, reading this, why would you not
 6 participate in any training program that is Police
 7 Department-wide?
 8 A. I don't think it would be why not. It was that in
 9 this case, given this type of position that was
 10 predetermined, I feel that by at least looking
 11 through the files, to say where could there be some
 12 potential injuries here, because of the age of
 13 individuals, and the time, and maybe different
 14 illnesses, that you would have been able to say, you
 15 know, these people might have problems with this type
 16 of conditioning.
 17 Q. Now, back in May 2003 -- prior to the drill, did you
 18 grieve this at all prior to May 25th?
 19 A. No.
 20 Q. There is a grievance procedure, right, through the
 21 Union?
 22 A. That's correct.
 23 Q. You were aware of the grievance procedure back in
 24 May 2003?

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- 1 MR. SILVERFINE: Paragraph 46.
 2 MR. ARMSTRONG: Thank you.
 3 A. On the denial of my IOD status, not being an
 4 attorney, but having some experience with how the
 5 injured on duty process works and how it's been on
 6 the books for over 25 years, I believe I clearly
 7 satisfied all the requirements of injured on duty. I
 8 retired under Chapter 32, Section 7, which is an
 9 incident and hazard undergone.
 10 The medical panel found that -- they also found
 11 on Chapter 32, Section 94 I retired under the Heart
 12 Law. To retire under Chapter 32, Section 7, you must
 13 have undergone an injury in the performance of your
 14 duty. I was clearly injured by collapsing on top of
 15 a Captain, being taken -- dragged to an area, given
 16 oxygen, then transported via ambulance to a hospital
 17 where the same Captain was there to observe all
 18 that.
 19 I then went from there to Boston Medical Center
 20 and had a procedure, cardio cath procedure performed
 21 on me, which then I discovered two weeks later, after
 22 I got the results, it made my return to the job
 23 impossible; that was one of the reasons. Other
 24 people had been given IOD for not even a third of

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1 that threshold.

2 Q. Let me stop you there.

3 A. Please. Excuse me. I will stop when I'm finished.

4 Q. I just want to ask you who else are the names of the
5 people --

6 MR. ARMSTRONG: Let him answer, will you,
7 please?

8 A. I gave you the courtesy earlier not to interrupt you
9 and I apologize. I'd appreciate it if you'd just
10 give me that courtesy.

11 Q. Absolutely. I think I've done that throughout here.

12 A. Number two, I was constantly monitored in such a
13 fashion for every little thing possible. When I
14 found out that this issue was a problem -- I never
15 knew the magnitude of the problem. I never knew the
16 amount of the problem. My concern was not to have
17 somebody get hurt. I came from the position and
18 always did from the start, to do what was right to
19 make sure everyone was protected. That was turned
20 around on me and I was harassed on the job for every
21 little thing humanly possible. And in the police
22 business where you can be subject to any type of
23 scrutiny, that's a very difficult work environment to
24 be under.

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1 took any interest in doing it, but I was subject to
2 the harassment and I was told by people it's because
3 of that.

4 I never knew the magnitude of this. It extended
5 into the Fire Department. I never knew that from the
6 beginning.

7 Q. Paragraph 46, who else is in a similar position that
8 you state here in paragraph 46?

9 A. When I was on the Retirement Board, my times were
10 logged in, logged out and there was a chargeback to
11 the system for my time and service. That has never
12 happened to any other person in the Town of Plymouth
13 that has served on the retirement system that is an
14 employee.

15 Q. Were there any other police officers that served?

16 A. I don't know. I don't know the total history of
17 everybody before me. I've been there close to ten
18 years now.

19 Q. During the time period you were there, were you the
20 only police officer?

21 A. There was a Department head and the Chief Financial
22 Officer was on the Board, too. So, there would have
23 been three Town employees on the Board.

24 Q. Any other police officers, public safety officers?

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1 I was then harassed with vacation. I'm out a
2 month, I'm called in, ordered in. My wife is in
3 hysterics when an officer comes to the door and says
4 call the station right away. No explanation, just
5 call. I call, and I'm confronted with that after
6 I've been out a month, and then the month after.

7 I wasn't too happy, but I knew if I didn't go
8 in, I'd be suspended; and that's exactly what they
9 were looking to do, get a reaction.

10 They used every tactic that they could to make
11 my life miserable. I found out that they had been
12 doing things for many, many years, 15 years and over
13 \$500,000 in public funds. That's what I was
14 subjected to every day of the week.

15 Q. But those are the same funds you then voted to ratify
16 in September of 2001?

17 A. That's what we wanted to do -- excuse me, is that a
18 question?

19 Q. Yes.

20 A. That was our original intention from the beginning,
21 to handle this matter in a private matter and do it.
22 The Town took no opportunity to correct it. The
23 harassment started and nobody, from the Town Manager
24 -- from Mr. Pomeroy up, or any one of those people

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1 A. No.

2 Q. On page 9, paragraph 48, you discuss the
3 reimbursement issue. Did the Retirement Board
4 meetings interfere with your shift or at the same
5 time as your shift as a police officer?

6 A. What would happen is that by statute, the Retirement
7 Board has to meet once a meeting -- I mean, once a
8 month. We have to disburse funds, we have to sign
9 for disbursement of funds.

10 But other times you could almost -- you could
11 find that we would set that date, so we'd have it in
12 advance, but then we'd have emergencies. We had
13 investments. We were presently running a hundred
14 million dollars.

15 Sometimes there would be a change in investment
16 managers, things would come up where we would have to
17 have a meeting to discuss that; or, to discuss the
18 performance of the funds, it might take three hours
19 to get through the eight managers that we had in
20 doing our due diligence.

21 So, with that, we would probably schedule an
22 investment meeting separate from the regular meeting,
23 because then you had a meeting that might go seven
24 hours long. And then, we had meetings on

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- 1 disabilities as well. So, there were a number of
 2 times possibly a month that I would have to meet.
 3 I would then go to the meetings. If I was
 4 working 8 to 4 and if the meeting was at 8, I'd go to
 5 the meeting at 8, and then go back to the station and
 6 go right to work.
 7 Q. So, it's fair to say there were occasions when the
 8 meetings that you attended did interfere or coincide
 9 with your work as a police officer?
 10 A. Oh, yes. Yes.
 11 Q. That was the question. And would that be often on
 12 these meetings you're mentioning?
 13 A. When we coordinated a meeting there, you know, I had
 14 to look at Patrick DellaRusso's time, Dick Manfredi's
 15 time, who is the Building Commissioner. And who --
 16 like any meeting that you would set up with a group
 17 of people, whose schedule can meet what in the best
 18 convenience of time. You know, we'd set them up that
 19 way.
 20 Q. So, taking into consideration the entire Board, by
 21 necessity, there would be times when your shift was
 22 overlapping with these meetings?
 23 A. Correct. Many times they would be on my days off, so
 24 there wouldn't be any problem at all.

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- 1 Q. In paragraph 49, you indicate you were subjected to
 2 different treatment. Which officers were under
 3 similar circumstances that you're referring to in
 4 paragraph 49?
 5 A. Well, we had a case where we had Officer Ditmairs who
 6 recently -- who suffered a back injury, who was given
 7 IOD. We had a fire fighter that retired after having
 8 a stroke at his house. He was retroactively given
 9 his benefits by Pam Nolan all the way back to his
 10 last day of work when he retired. So, I've seen
 11 those opportunities.
 12 When I applied for my benefits to Mrs. Nolan,
 13 she had just signed an agreement with the Fire
 14 Department retroactively giving Captain Al Thom his
 15 benefits back and refused mine.
 16 Q. In paragraph 50, likewise, could you tell me which
 17 officers you're referring to that you were treated
 18 differently in this particular paragraph?
 19 A. I'm trying to -- I'm reading it here (Witness
 20 perusing document). I don't see -- we've already
 21 discussed that.
 22 Q. I'm just asking.
 23 A. Can you ask a different question?
 24 Q. Sure. I'll try. You say by denying you the funds --

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- 1 A. Well, 50 is different.
 2 Q. That's what I'm reading.
 3 A. You're reading something different.
 4 Q. 50.
 5 MR. GALLITANO: "Further, by denying."
 6 A. Okay. You're right. I'm sorry.
 7 Q. I'm trying to get to the important stuff. It says,
 8 "More importantly knowingly and intentionally forcing
 9 you to take part in a drill," and then it says,
 10 "later on exposing you to treatment different from
 11 other officers on the force with the intent to cause
 12 you harm." What officers are you referring to in
 13 terms of treating you differently?
 14 A. Well, I can categorically say from speaking with
 15 Kevin Fahy and various Sergeants, that there was
 16 nobody else that they went after, or were told to
 17 scrutinize, more than me. That's the best I can
 18 answer that.
 19 Q. That's fine. In paragraph 51, what is the basis of
 20 your allegation that the Chief intentionally set out
 21 to harm you? That's what this says.
 22 A. Well, I believe he was negligent in not taking into
 23 consideration the conditions that I had at the time.
 24 They were documented and he could have easily looked

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- 1 at that as a protocol to look at to say, you know,
 2 could there be a potential harm in this type of
 3 training given the fact that this wasn't an everyday
 4 occurrence for everybody in the Department.
 5 Q. Is it true, as a police officer you faced everyday
 6 harms just being on the job?
 7 A. That is correct. Inherently, that is the job. That
 8 is correct.
 9 Q. What do you say -- how does this differ from any
 10 other assignment, drill, that you receive as part of
 11 your job as a police officer?
 12 A. Well, it's just a -- it's a matter of common sense to
 13 realize that if you've got 25 or 26 years in, then
 14 you're in your late 40s. You surely can't do what
 15 someone that's 24 years old can. You know, no one in
 16 this room can say that they can do what they did when
 17 they were 21 years old, or 22.
 18 Common sense would dictate, given the intensity
 19 of this drill -- and the prerequisite of the
 20 individuals that were running this from the State
 21 Police are in physical condition, where, like I said,
 22 they work out during the day as part of their
 23 protocol to the job; that's all they do. This was a
 24 physically demanding drill for the best of people

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- 1 that were in physical condition like they were.
- 2 Q. On page 10 of Exhibit 1, paragraph 54, just so we're
- 3 clear, the \$2,000 figure that you mention in that
- 4 paragraph 54, how did you arrive at that figure?
- 5 A. That's actually low. I get -- I think I get 11 -- at
- 6 the time I was getting like 1,154 a week. I mean,
- 7 give or take. So, we're talking \$2,100. It came to
- 8 \$2,000, roughly. I get 1,150 -- I get 100 a week --
- 9 Q. 1,050?
- 10 A. Yes. At the time that's what I was getting, that
- 11 times two weeks.
- 12 Q. Work it out for me. So, how did the 2,000 figure --
- 13 A. When we did the complaint, I looked at that time and
- 14 I said I get about a thousand. And actually, when I
- 15 went back and looked at that time, it's actually
- 16 1,050 okay. I wasn't going to amend the complaint
- 17 for \$50.
- 18 Q. So, this is time you say you were entitled to as
- 19 vacation time used instead of sick time?
- 20 A. Correct. What happened is, when I came out of the
- 21 hospital, after having the cardio cath, and I had
- 22 spoke to the doctor that we referred to in this
- 23 earlier section here -- what number is that one?
- 24 Q. That's 3.

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- 1 A. Exhibit 3. When I spoke with her and got that
- 2 letter, she told me that it takes about two weeks for
- 3 the cardio cath to be reduced to writing. I don't
- 4 know if you're following me on that.
- 5 Q. I am.
- 6 A. What they do is the doctor recites it. As they
- 7 speak, they make these -- I heard them do it because
- 8 you're half awake. They take a tape and they reduce
- 9 that into report form. So, she said in two weeks I'd
- 10 get that. So, I went home. I was on sick for a
- 11 while. I had a lot of medication. I had a lot of
- 12 things to think about. I talked to my brother-in-law
- 13 and various people, my wife.
- 14 I just told the Department put me in for
- 15 vacation time. I've got to sort this all out and see
- 16 what's going on. I then got the cardio cath from
- 17 Boston, which was after those two letters, okay. I
- 18 didn't have them at the time.
- 19 I had an appointment with Dr. Moore, we went
- 20 over the cardio cath results, and he said I can't let
- 21 you go back. And then, I realized how serious it was
- 22 and I put my retirement papers in around, I think it
- 23 was, the 28th of June; and that's how I came to the
- 24 2,000. It's about two weeks' work. It was two --

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- 1 our calendars are 4 and 2, then it goes 4 and 2
- 2 again. It comes out to two weeks' pay.
- 3 Q. The demands you indicate you made upon the Town, to
- 4 whom did you first make it to, if you remember?
- 5 A. I first gave all the document -- after I got the
- 6 documentation from the Retirement Board and it was
- 7 completed, I gave all the documentation to Larry
- 8 Rooney, who was the vice president -- steward at the
- 9 time. I gave Larry Rooney the certificate from the
- 10 State medical panel. I gave Larry Rooney the
- 11 doctor's narrative from the medical panel. I gave
- 12 the finding of fact from the medical panel, the
- 13 finding of fact that the Board sent up.
- 14 I indicated to Larry Rooney that the doctors
- 15 retired me on Chapter 32, Section 7. It was clearly
- 16 stated by the medical panel and the narrative report
- 17 that I retired under 94, Chapter 32, Section 94. All
- 18 those were given to Larry. He had two meetings with
- 19 the Chief. And the Chief still said to him in an
- 20 e-mail, and I believe you have that, too, in
- 21 discovery, I'm not paying him because I disagree with
- 22 the medical panel.
- 23 Q. And you submitted that again where?
- 24 A. I then talked to Mrs. Flynn and I asked her for a

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- 1 written explanation from the Chief and I never got
- 2 one from him or her. The only thing I got was when I
- 3 made -- I called Pam Nolan and I asked her for a
- 4 written explanation. I got a two-line explanation
- 5 and that was about nine months later.
- 6 Q. And those are words to the effect that --
- 7 A. It's on her stationery. She said I find nothing
- 8 compelling to override the Chief's decision. We have
- 9 it somewhere. It's in the discovery.
- 10 Q. And then you made further demand somewhere else?
- 11 A. No, that was it.
- 12 Q. Then your lawyers made a demand to the Town?
- 13 A. Then after waiting nine months, I did that. Patrick
- 14 DellaRusso had asked me to wait and see if we can
- 15 work this out and I said, sure. I waited and waited
- 16 and waited.
- 17 Q. What is your -- let's start off presently. What is
- 18 your present relationship with the named defendant,
- 19 Chief Robert Pomeroy?
- 20 A. I mean, I haven't seen Bob in years. I never had a
- 21 controversial relationship with him. We never had
- 22 any arguments or anything.
- 23 Q. During the time period you worked for the Plymouth
- 24 Police Department, what was your relationship with

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1 Chief Robert Pomeroy?
2 A. It was a professional relationship. I didn't work
3 with him that much. He was in different positions on
4 the job. When I worked nights, he was working days.
5 So, we were far apart. I never had any -- I didn't
6 work with him as a partner. He wasn't a shift
7 commander -- maybe earlier, when he was a Sergeant,
8 I might have worked -- you know, I think he might
9 have worked 4 to 12 when I was there. I never had a
10 problem.
11 Q. You never had any animosity towards him?
12 A. No.
13 Q. Were you out to get him when you went to the IG's
14 Office?
15 A. No, I wasn't.
16 Q. Now, Lieutenant Kevin Fahy, who you indicated was a
17 friend of yours and he signed the affidavits that's
18 attached to your complaint, how long have you been
19 friends with him?
20 A. Kevin was on the job prior to me getting there. He's
21 older than I am. He was about five years on the job
22 when I came there. Kevin was a Sergeant, then he
23 took the Lieutenant's test. I worked with him on
24 various shifts for 25 years.

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1 Q. Do you socialize with him?
2 A. I was the Treasurer of the Police Association. So, I
3 ran functions that Kevin and different officers went
4 to. I haven't seen Kevin in years now. He's -- he
5 works over at the Federal Courthouse.
6 Q. I forgot to ask you this a couple of minutes ago.
7 The Retirement Board duties that you had while you
8 were a police officer, approximately how many hours a
9 week or a month did that require of your time?
10 A. Like I said, it was very simple. Some months you
11 have your standard meeting. There wouldn't be any
12 disabilities or various things that would take up
13 more time, because Patrick and Dick said they don't
14 want -- they want to be able to schedule the meetings
15 where we could have maybe a couple of hours, but if
16 we had an investment meeting and then a regular
17 meeting, it sometimes would go six hours and it was
18 just too much. And we didn't want to -- obviously,
19 we wanted to put our best efforts into the investment
20 side of it and give it our best effort.
21 So, if we had a quarterly report coming in
22 April, say, we might have to schedule two meetings.
23 Sometimes something comes up where a fund company
24 might be taken over by another company. It happens

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1 all the time in the financial world. That's a
2 violation of our contract with each individual
3 manager. So, what we have to do -- not a violation.
4 They have to immediately tell us what's going on and
5 we would sit down and bring the managers in and
6 discuss any changes in the portfolio, any changes in
7 the structure of the company. All those things that
8 we could do as part of due diligence and then make a
9 decision either to stay with them or to find another
10 vendor.
11 Q. Your best guess, how many hours a week, hours a
12 month?
13 A. You know, the meetings would go three hours, so it
14 might be sometimes -- one month might be three hours,
15 some nights you had a seminar, you had to go to
16 different conferences. So, it could be, you know, it
17 could be three or four days a month or it could be
18 one.
19 Q. What was the maximum number you put in in a month?
20 A. You know, like I'll give you an example where there
21 are conferences, it might be Saturday or Sunday. It
22 was nothing to do with time. I was on my own time.
23 We weren't compensated. It was a volunteer job.
24 Q. Did you ever work the weekend shift 4 to --

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1 A. Right. If I was on, that's right, but sometimes
2 you'd be off. I can't really put a hard number on
3 it. We have the records that can be easily checked
4 if you wanted to. I think you could back it out that
5 way from the chargeback.
6 Q. Was the Police Department -- back when you worked
7 there, was the Town itself having financial
8 difficulties?
9 A. Not that I know of.
10 Q. I don't know if it's different than any other Town.
11 I'm just asking. I guess a better question is: Did
12 they have any particular financial problems that
13 you're aware of?
14 A. No. I know the fund is doing well and has done well.
15 We did 17 percent last year. I don't see -- I mean,
16 that could be a matter of, you know, who thinks
17 you're doing good and who thinks you're doing bad,
18 but it wasn't anything pressing that would make, you
19 know... My attendance wouldn't have bankrupt the
20 Town, I don't think.
21 MR. GALLITANO: Off the record.
22 (OFF THE RECORD)
23 Q. I just want to direct your attention, if we could, to
24 your Answers to Interrogatories, which I believe are

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1 Exhibit 2, and that's before you. And if I could
2 direct you to page 4, your answer to Number 6. I'm
3 just going to ask you a few questions following up on
4 this, let me know when you're there.
5 A. (Witness perusing document) Is your question 6?
6 Q. Interrogatory Number 6 and below that is your answer,
7 do you see that?
8 A. Yes. Uh-huh.
9 Q. You indicate in paragraph 2, "It was well known by
10 Pomeroy and well documented in my personnel file that
11 I had several physical illnesses for which I was
12 being treated and medicated." Are those all the
13 illnesses and medication you've referenced earlier
14 today?
15 A. Yes.
16 Q. Is there anything else you haven't mentioned?
17 A. No.
18 Q. Is there any other documents that you say the Chief
19 had which you haven't referenced for us today
20 relative to your medical history in your personal
21 file?
22 A. No.
23 Q. You also say, I think in this answer that you raise,
24 you raise the issue of your participation at the

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1 bottom of the second paragraph in your answer to
2 Number 6. It says, "The issue of my participation
3 was raised." When was that raised? Do you see that?
4 Page 4, the second paragraph of your answer. I'll do
5 the whole line. "Even if he didn't know" --
6 A. Okay.
7 Q. Do you see that?
8 A. Yes.
9 Q. At the bottom it says, "Especially since the issue of
10 my participation was raised?"
11 A. I don't follow that in that respect. I just follow
12 it that I think participation by the group as a
13 whole, everybody was as a whole. It was raised by
14 Paul Boyle that there were concerns about the
15 intensity of the drill.
16 Q. So, my question at this point is: Was your
17 individual participation raised by you or anyone else
18 that you know of prior to May 25th, 2003?
19 A. I don't know if it was raised specifically for me.
20 Q. Did you yourself raise it with the Chief?
21 A. No.
22 Q. Do you know if Paul Boyle specifically raised the
23 issue with the Chief?
24 A. I don't think -- I don't know.

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1 Q. Besides the general issue of all officers
2 participating in this May 25th drill raised by
3 Officer Boyle, are you aware of any other document in
4 writing that presented that issue to the Chief prior
5 to May 25th, 2003?
6 A. I don't know exactly what transpired. I know there
7 was a discussion about it at a meeting.
8 Q. Again, I'm just asking, are you aware of any
9 document, piece of paper, that raises that issue
10 relative to your participation?
11 A. No. I don't know if there's any.
12 Q. In the next paragraph you wrote -- and again, I'm
13 kind of jumping to the pertinent point -- "The Town,
14 through Pomeroy, was negligent by failing to
15 institute a protocol to screen members"?
16 A. Okay, I see that.
17 Q. Was that issue raised by you or anyone else that you
18 know of to the Chief prior to May 25th, 2003?
19 A. I don't know exactly what transpired at that meeting
20 with Paul, and the Union officials, and the Chief. I
21 don't know what happened, specifically wording, I
22 wasn't there. I don't know what was exactly said,
23 but I know that Paul had told me concerns he raised
24 about the training, the intensity of the training and

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1 how we would handle it.
2 Q. Are you aware either yourself or through anyone else
3 specifically whether or not the issue of instituting
4 a protocol to screen members was raised?
5 A. I don't know. Like I said, I wasn't at that meeting.
6 Q. Are you aware of any documentation which would
7 indicate that this issue about instituting a protocol
8 to screen members was raised prior to May 25th, 2003?
9 A. I don't have any firsthand knowledge.
10 Q. Is it fair to say the basis of this answer is what
11 Paul Boyle related to you in his conversation with
12 the Chief?
13 A. Yes.
14 Q. Anyone else?
15 A. No.
16 Q. I'm not looking to go over anything else, but I just
17 want to know, in Answer Number 7, on the next page,
18 there's a reference. I think in the first paragraph
19 you indicate that you were constantly being told by
20 supervisors that, you know, they are after you
21 because of the Quinn bill issue. Do you see that?
22 A. Yes.
23 Q. It's the first line going into the second line. Who
24 told you specifically that they are after you because

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1 of the Quinn bill issue?

2 A. Well, I can -- if you want to put it that broadly. I
3 can say that Captain Botieri told me that the Chief
4 wasn't too happy about it.

5 Q. What did Captain Botieri tell you?

6 A. Way back, when we first discovered it, I spoke to
7 Larry Rooney about it. I had some concerns about if
8 someone was injured, there would be a real problem,
9 because when a police officer is killed in the line
10 of duty, I know by regulations, five people check
11 off -- sign off at PAREC because of the amounts of
12 monies that are disbursed.

13 With that, my concern was, if something tragic
14 were to happen, and his cousin is Mike Botieri, it
15 could be a problem for his widow. And I said I don't
16 want to be in that position given the fact that we
17 couldn't justify the amounts that were being paid.
18 So, with that, Larry Rooney told me, well, we ought
19 to go up and tell Mike right now. And I said --

20 Q. I'm sorry, I don't know who Mike is.

21 A. Mike Botieri. I said, okay, let's go. My intent was
22 not to go after anybody. My genuine intent, and
23 still is, if something tragic happened like that,
24 we'd be faced with a situation where legally we could

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1 you say Captain Mike Botieri made this statement to
2 you?

3 A. This was before we -- this had to be in, I would say,
4 early 2000. Somewhere in around the year 2000.

5 Q. Was anyone else present?

6 A. No. Me and Larry Rooney went up and we sat in Mike's
7 office after work. We sat there for a good hour. I
8 don't know the exact date, but Larry Rooney was the
9 steward at the time and he came with me.

10 Q. And just so I'm also clear, are you saying that
11 Captain Botieri told you that they are after you
12 because of the Quinn bill issue?

13 A. He told me that the Chief was not happy with what I
14 had -- he had discussed it with him and the Chief
15 basically told him not to worry about it, don't worry
16 it; and in fact, after that meeting I had with Mike
17 Botieri and Larry Rooney, after he spoke to the
18 Chief, he then himself went over and spoke to Mrs.
19 Flynn about the matter and wanted to have the Town
20 meeting take some type of action and nothing was
21 done.

22 Q. It looks like two paragraphs down, on page 5,
23 Interrogatory Answer Number 7, you wrote, again, "I
24 was routinely harassed by Pomeroy." Is this the same

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1 not pay a death benefit in the proper amount until
2 the proper paperwork and documents were squared away;
3 and that's what Mike Sacco told me; that it would be
4 very difficult, if not, impossible to pay it. We
5 could pay it after they were corrected, but we
6 wouldn't have to pay it to begin with.

7 So, I went up to Mike with Larry Rooney with me,
8 and I explained the entire situation to him. He was
9 very helpful. He was very thankful that I did it. I
10 even called him back the next day with the wording
11 from talking to Mike Sacco, to put into the personnel
12 bylaw. And I told him the deadline for the Town
13 meeting, that they could put in the fall Town
14 meeting, they could amend the personnel bylaw to
15 cover these things and this was way back in the
16 game.

17 A short time later, a week later, I ran across
18 Captain Botieri and he wasn't a happy man. He said
19 the Chief said I don't know what the hell I'm talking
20 about. Don't listen to him and just do your job,
21 type of thing. So, he wasn't happy about what he
22 must have heard from someone else, and that's when
23 everything went downhill.

24 Q. Two follow-up questions to that. What time period do

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1 harassment you were mentioning to us earlier, or was
2 it any different in this answer?

3 A. The same type as before.

4 Q. Did you file any grievance relative to any perceived
5 harassment that you say happened to you with Chief
6 Pomeroy?

7 A. No. I mean, there isn't a provision in the contract
8 for nitpicking. You can bend -- no.

9 MR. SILVERFINE: We'll suspend now.

10 THE REPORTER: For the record, would you
11 like a copy of the transcript, Mr. Gallitano?

12 MR. GALLITANO: Yes, I want a copy. A
13 regular transcript and a mini.

14 (DEPOSITION SUSPENDED AT 3:30 P.M.)
15
16
17
18
19
20
21
22
23
24

THOMAS KELLEY

FEBRUARY 9, 2006

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1 CERTIFICATE

2 I, the undersigned, THOMAS KELLEY, do hereby
3 certify that I have read the foregoing deposition
4 taken on February 9, 2006, and that it is true and
5 correct to the best of my knowledge, information, and
6 belief (with the exception of the following
7 corrections listed below):

8 Page Line Correction

9 _____
10 _____
11 _____
12 _____
13 _____

14
15
16 Signed under the pains and penalties of perjury this
17 _____ day of _____, 2006.

18
19
20 _____
21 THOMAS KELLEY
22
23
24

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1 COMMONWEALTH OF MASSACHUSETTS
2 BRISTOL, ss.

3
4 I, BARBARA M. MONTIJO, a Registered Professional
5 Reporter and Notary Public, duly commissioned and
6 qualified within and for the Commonwealth of
7 Massachusetts, do hereby certify:

8
9 That THOMAS KELLEY, the witness whose deposition
10 is hereinbefore set forth, was duly sworn by me, and
11 that such deposition is a true record of the
12 testimony given by the witness to the best of my
13 skill, knowledge, and ability.

14
15 IN WITNESS WHEREOF, I have hereunto set my hand
16 and my affixed notarial seal this _____ day of
17 _____, 2006.

18
19
20 _____
21 Registered Professional Reporter
22 Notary Public

23 My commission expires: 1-12-2007.
24

DUNN & GOUDREAU

EXHIBIT A CONTINUED

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. 1:05-cv-10596-NMG

-----)
THOMAS M. KELLEY,)
Plaintiff)
VS.)
TOWN OF PLYMOUTH, ET AL,)
Defendant)
-----)

CONTINUED DEPOSITION OF THOMAS M. KELLEY, a
witness called for examination by counsel for the
Defendant, taken pursuant to the applicable provisions of
the Massachusetts Rules of Civil Procedure, before
LINDA M. CORCORAN, a Court Reporter-Notary Public in and
for the Commonwealth of Massachusetts, at the Law Offices
of Joseph R. Gallitano & Associates, 34 Main Street
Extension, Suite 202, Plymouth, Massachusetts, on
Wednesday, June 21, 2006, commencing at 2:07 p.m.

LINDA M. CORCORAN
CERTIFIED COURT REPORTER
P. O. Box 4
Kingston, Massachusetts 02364
(781) 585-8172

I N D E X

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Direct examination by Attorney Silverfine	4

E X H I B I T S

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Exhibit No. 16	Executive session minutes dated May 27, 2004	83
Exhibit No. 17	Letter dated June 1, 2004	85
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A P P E A R A N C E S

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S T I P U L A T I O N S

IT WAS STIPULATED AND AGREED by and between
counsel for the respective parties that all objections,
except as to the form of the question, shall be reserved
until time of trial; that motions to strike shall be
reserved until time of trial; that the witness shall read
and sign the transcript of this deposition within 30
days; however, reading and signing of the deposition
transcript before a notary shall be waived.

P R O C E E D I N G S

THOMAS M. KELLEY, a witness called for
examination by counsel for the defendant, having been
satisfactorily identified and having been duly sworn, on
oath deposes and continues to testify as follows:

DIRECT EXAMINATION BY ATTORNEY SILVERFINE

Q. Good afternoon, Mr. Kelley. This is a
continuation of the deposition we started on February 9,
2006, in my office, and as a courtesy to you, we're
continuing your deposition this afternoon. Hopefully
we'll be able to finish. If not, we'll finish on some
other portion of the afternoon. I'm hoping to finish in
the next couple of hours.

Continuing on where we left off, same ground
rules apply. If you don't understand a question, you

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1 have to let me know. If you need me to repeat something
2 again, please let me know. If there's any reason you
3 need a break, also let me know. If you need to speak to
4 your counsel, also please let me know, and of course,
5 we'll provide it.

6 (Mr. Gallitano enters the room.)

7 MR. SILVERFINE: Mr. Gallitano has just joined
8 us.

9 MR. GALLITANO: You just keep going, and I'm
10 going to be in in a few minutes.

11 MR. SILVERFINE: Fair enough.

12 BY MR. SILVERFINE

13 Q. Mr. Kelley, what I'm going to do is basically
14 jump in from where we left off last time. Right before
15 we get there, are you on any medication today?

16 A. Just my regular heart medicine. I take those
17 five medications.

18 Q. The same ones you mentioned last time?

19 A. Yes, yes. I take those daily.

20 Q. Anything new?

21 A. No.

22 Q. Any change in your job status from the last
23 time we were there?

24 A. No.

Page 6

1 Q. Anything new?

2 A. No, I'm still retired.

3 Q. What I'm going to do is we had marked a number
4 of exhibits last time. And I'm going to start off as to
5 where we were in our last deposition, where we ended,
6 which was we were referring to your answers to
7 interrogatories, which is marked as Exhibit 2. So I'm
8 going to again -- I'm going to show you Exhibit 2, which
9 we've already marked on February 9, and refer you
10 specifically as to some of your answers. And we left off
11 on Answer No. 7.

12 Do you see where I'm referring to?

13 (Hands to witness.)

14 A. Yeah, yes.

15 MR. SILVERFINE: Just give me a second. One
16 second. Just a moment.

17 (Pause.)

18 Q. As far as your days as a police officer, is it
19 a supervisor's duty to monitor a particular shift?

20 A. Well, the makeup of the department when I left
21 was you have a patrol supervisor possibly that worked
22 either in your area or there were two, depending on the
23 manning posture. Then you would have a shift commander
24 who could be a sergeant or a lieutenant.

Page 7

1 Q. And who was your shift supervisor, or who
2 monitored your duties as a patrol officer?

3 A. Most of the time Kevin Fahy was there and
4 Lieutenant Budge was the shift commander.

5 Q. What were their duties as shift commanders as
6 it related to a patrol officer such as yourself?

7 A. Well, they would make up the daily schedule.

8 They would bring any new directives or any new
9 information most of the time to the attention of the
10 officers or any new concerns, extra checks in various
11 areas for one reason. Vandalism, public drinking, those
12 types of things would be brought to the attention
13 sometimes by the lieutenant, sometimes by the sergeant.
14 It depended on the activity of the day.

15 Q. Are the supervisors, your supervisor also, in a
16 sense supposed to monitor not only yourself but other
17 patrol officers in their command? Is that fair to say?

18 A. Yes, they did.

19 Q. What other police officers have served on the
20 Plymouth Retirement Board that you know of since you've
21 been on it?

22 A. There's none.

23 Q. During the past few years, have you heard of
24 any police officer who ever served on the Plymouth

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1 Retirement Board? Are you aware of any?

2 A. Not in the last ten years that I was there. I
3 mean, it was just myself. I don't remember anybody prior
4 to that.

5 Q. You have heard discussion about other town
6 employees. What other town employees who worked for
7 Plymouth also serve on the retirement board while you've
8 been serving there?

9 A. You had the building commissioner, and he's
10 been the building inspector --

11 Q. His name?

12 A. Dick Manfredi. He was from the inspection
13 services division. By statute you have the treasurer as
14 designee, and then in the case of us, it's the chief
15 financial officer.

16 Q. And who was that?

17 A. At the time it was Mr. Dello Russo. There was
18 a John Madden there temporarily for a couple of months.

19 Q. What's John Madden's position with the town?

20 A. He was an accountant at the time. They were in
21 between two financial directors, and he took over while
22 they hired another guy temporarily. So he had to sit up
23 there, come to the board.

24 Q. Was he actually part of -- what department is

1 he part of?

2 A. He would have been a part of the department of
3 -- the finance department.

4 Q. Anyone else you can think of?

5 A. Right now presently a Bruce Miller, who's now
6 there.

7 Q. Where's he from?

8 A. He's now the finance director. He replaced
9 Dello Russo.

10 Q. Do you know when that was?

11 A. Let's see. Geez, I don't remember. Maybe
12 around 2003, 2004, somewhere in that area.

13 Q. Relative to the Columbine-like drill back on
14 May 25, 2003, prior to the drill itself, did you object
15 to participation in that drill?

16 A. I was never made aware that an objection would
17 be entertained.

18 Q. But the question is, did you?

19 A. No, I didn't.

20 Q. In other words, did you verbalize that you
21 yourself had an objection to participate for any reason?

22 A. No, prior to that I --

23 Q. All right.

24 A. Excuse me.

Page 10

1 Q. I'm sorry. I thought you were finished.

2 A. No, I wasn't.

3 Q. Okay.

4 A. Prior to that I did notify the town as a result
5 of receiving a letter from the chief regarding sick time
6 of two illnesses that I had been treated for with
7 doctors' notes. I gave them to Botieri. And one was for
8 Meniere's disease. I was under Dr. Durante's care for
9 that as well as Lyme disease, and I was under the care of
10 Dr. Molloy for that. And I brought in those doctors'
11 notes and gave them to Mr. Botieri in hand.

12 Q. First of all, when did you do that?

13 A. I would say that might have been -- I think the
14 letters come out like in March/April, in that area.
15 Around the April area.

16 Q. And did you specifically object or make
17 reference to your not wanting to participate in that
18 drill?

19 A. No, I never made any.

20 Q. Either in writing or verbally?

21 A. Never was aware of it.

22 Q. Did you make any grievance as to participation
23 in the drill of May 25, 2003, prior to the drill?

24 A. We were told it was mandatory. We were subject

1 to discipline if we didn't participate.

2 Q. So the question is, did you file a grievance?

3 A. No.

4 Q. And just so I understand -- and I think you may
5 have testified to this before and just briefly mentioned
6 -- what were your preexisting medical conditions as they
7 were right prior to May 25, 2003?

8 A. As I just answered, they were Meniere's
9 disease. I was under the care for Meniere's disease as
10 well as I was on -- I was under Dr. Molloy's care for
11 Lyme disease.

12 Q. And you said you were taking medication for
13 both of them?

14 A. Yes.

15 Q. And you were able to perform the essential
16 functions of your job as a police officer in your daily
17 duties?

18 A. There were times prior to the drill there that
19 I went home from work. I was going to say home from
20 school. Jesus, home from work because of symptoms that
21 were attributed to those two things. I couldn't complete
22 my shift. I had to be driven home several times. I got
23 dizzy spells. And the symptoms of those two type of
24 things -- you get dizzy spells. Sometimes I would be so

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1 dizzy I couldn't even drive home, and I would have to
2 take the medication and lay down. A couple of times I
3 called Dr. Durante and met him. My wife would drive me
4 to his office, and he would examine me. He could tell
5 that you were having a Meniere's attack.

6 Q. Referring to Exhibit 2, Interrogatory No. 10,
7 which states: (Reading) Please set forth all the facts
8 which rely on the alleged defendants were aware of your
9 preexisting medical condition and that the May 25, 2003,
10 drill would aggravate that medical condition (end
11 reading), you answered: (Reading) Based on the medical
12 notes on record in my personnel file (end reading).

13 Do you see that?

14 A. Uh-huh. Yes, I'm sorry. Yes.

15 Q. Besides what you've just referenced, are there
16 any medical notes that you say on record in your
17 personnel file that were present prior to May 25, 2003?

18 A. Not that I'm aware of.

19 Q. Are you aware of any obligation anyone from the
20 police department has to review medical notes in your
21 personnel file?

22 A. Well, going back to my previous answer and your
23 question, I explained I believe earlier in the deposition
24 that on a yearly basis we are given a letter from the

Page 13

chief who reviews everyone's file about the use of sick time. And at that point everybody gets a generic letter, and it states you might have used five days, twelve days. This particular year I believe I used twenty-three days. Or it indicates how many full days you used and how many half days you used, like if you got sick at 12 o'clock and you went home sick type of thing. And that was signed by the chief. That was a contractual item that the chief was required to do on an annual basis, and it was for the protection of both sides.

If you felt that the letter was not representative of your sick time, you could produce medical records that would say you have a legitimate reason for these times, and I exercised that right. And I also then e-mailed the chief indicating that I gave him -- and we have that, I believe, in the production of documents. I e-mailed him indicating that I gave those medical records, those medical notes to Mr. Botieri, and I was requesting him to review that and then retract his letter from me because I felt that it was a legitimate use of sick time. I did that twice, and I never received an answer back from him, and he never retracted his letter. He never responded to my request.

Q. This amount of sick time you used, was that

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twelve days prior to May 25, 2003?

A. No, it would have been a cumulative of a year, say, from, oh, April 30 to the previous April 30. It's like a calendar annual basis. At some point they stop and they say, okay, from this point back a year, use the following days. We had -- I believe there's a copy of it in their documents as well.

Q. Do you know what the date, that anniversary date you were referring to is?

A. I don't know, but it's in the documents that I think you produced or we produced. It is in there.

Q. Other than what you've now testified, did you do anything else to notify the chief or the town of your medical condition prior to May 25, 2003?

A. No, those -- like I said, the letter is signed by the chief. It is part of a contractual obligation that he has to review, so he would have had knowledge of it being there. And I never received a response after I justified my days.

Q. Again, in Exhibit 2, your answer to Interrogatory 11 says: (Reading) Please set forth all communications you had with any union representative prior to May 25, 2003, drill regarding your inability to participate due to your preexisting medical condition

Page 15

(end reading). And your answer was: (Reading) The union president was to hold a membership meeting with the chief on the issues and concerns about my preexisting medical condition and inability to participate in the drill (end reading).

Is that correct?

A. I don't particularly remember it being written like that, but I remember there was a question about individuals that have had issues. And I believe we just found out this morning that there were two individuals that were excused through some process that I don't know.

Q. My first question is, that's what you wrote back in Exhibit 2 on August 25, 2005, under oath?

A. Right, right.

Q. And my question is, if I could have it, do you recall when that meeting you say with the chief was?

A. I believe they had a discussion on the Columbine issue and all the training program and some of their concerns in their impact bargaining session with the AR-15s prior to that. It was maybe a month or month and a half before.

Q. And who was present at that meeting?

A. I believe Paul Boyle was, Dana. I believe the chief was.

Page 16

Q. Dana?

A. Dana Goodwin.

And I believe the chief and Captain Botieri were there.

Q. And do you know what was discussed?

A. I know they discussed that, and they discussed the impact bargaining, I believe, on the use of the AR-15s.

Q. What information are you aware of that they discussed your preexisting medical condition and your inability to participate in the drill?

A. I'm not aware of any -- I'm not aware of any exact language. I wasn't there.

Q. I'm just trying to follow up on -- because what you wrote in your answer was you were to bring up a meeting -- concerns about preexisting medical condition and inability to participate in the drill.

So what information, if any, are you aware of that was brought up?

A. I don't have any information of what specifically because I don't have any notes of that meeting or anything like that. I just know that they did discuss. They had concerns as the union for individuals.

Q. Do you know in your conversations with Paul

1 he part of?

2 A. He would have been a part of the department of
3 -- the finance department.

4 Q. Anyone else you can think of?

5 A. Right now presently a Bruce Miller, who's now
6 there.

7 Q. Where's he from?

8 A. He's now the finance director. He replaced
9 Dello Russo.

10 Q. Do you know when that was?

11 A. Let's see. Geez, I don't remember. Maybe
12 around 2003, 2004, somewhere in that area.

13 Q. Relative to the Columbine-like drill back on
14 May 25, 2003, prior to the drill itself, did you object
15 to participation in that drill?

16 A. I was never made aware that an objection would
17 be entertained.

18 Q. But the question is, did you?

19 A. No, I didn't.

20 Q. In other words, did you verbalize that you
21 yourself had an objection to participate for any reason?

22 A. No, prior to that I --

23 Q. All right.

24 A. Excuse me.

1 to discipline if we didn't participate.

2 Q. So the question is, did you file a grievance?

3 A. No.

4 Q. And just so I understand -- and I think you may
5 have testified to this before and just briefly mentioned
6 -- what were your preexisting medical conditions as they
7 were right prior to May 25, 2003?

8 A. As I just answered, they were Meniere's
9 disease. I was under the care for Meniere's disease as
10 well as I was on -- I was under Dr. Molloy's care for
11 Lyme disease.

12 Q. And you said you were taking medication for
13 both of them?

14 A. Yes.

15 Q. And you were able to perform the essential
16 functions of your job as a police officer in your daily
17 duties?

18 A. There were times prior to the drill there that
19 I went home from work. I was going to say home from
20 school. Jesus, home from work because of symptoms that
21 were attributed to those two things. I couldn't complete
22 my shift. I had to be driven home several times. I got
23 dizzy spells. And the symptoms of those two type of
24 things -- you get dizzy spells. Sometimes I would be so

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1 Q. I'm sorry. I thought you were finished.

2 A. No, I wasn't.

3 Q. Okay.

4 A. Prior to that I did notify the town as a result
5 of receiving a letter from the chief regarding sick time
6 of two illnesses that I had been treated for with
7 doctors' notes. I gave them to Botieri. And one was for
8 Meniere's disease. I was under Dr. Durante's care for
9 that as well as Lyme disease, and I was under the care of
10 Dr. Molloy for that. And I brought in those doctors'
11 notes and gave them to Mr. Botieri in hand.

12 Q. First of all, when did you do that?

13 A. I would say that might have been -- I think the
14 letters come out like in March/April, in that area.
15 Around the April area.

16 Q. And did you specifically object or make
17 reference to your not wanting to participate in that
18 drill?

19 A. No, I never made any.

20 Q. Either in writing or verbally?

21 A. Never was aware of it.

22 Q. Did you make any grievance as to participation
23 in the drill of May 25, 2003, prior to the drill?

24 A. We were told it was mandatory. We were subject

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1 dizzy I couldn't even drive home, and I would have to
2 take the medication and lay down. A couple of times I
3 called Dr. Durante and met him. My wife would drive me
4 to his office, and he would examine me. He could tell
5 that you were having a Meniere's attack.

6 Q. Referring to Exhibit 2, Interrogatory No. 10,
7 which states: (Reading) Please set forth all the facts
8 which rely on the alleged defendants were aware of your
9 preexisting medical condition and that the May 25, 2003,
10 drill would aggravate that medical condition (end
11 reading), you answered: (Reading) Based on the medical
12 notes on record in my personnel file (end reading).

13 Do you see that?

14 A. Uh-huh. Yes, I'm sorry. Yes.

15 Q. Besides what you've just referenced, are there
16 any medical notes that you say on record in your
17 personnel file that were present prior to May 25, 2003?

18 A. Not that I'm aware of.

19 Q. Are you aware of any obligation anyone from the
20 police department has to review medical notes in your
21 personnel file?

22 A. Well, going back to my previous answer and your
23 question, I explained I believe earlier in the deposition
24 that on a yearly basis we are given a letter from the

Boyle and Dana Goodwin whether they mentioned specifically that they brought up concerns about you and any preexisting medical condition?

A. I don't know if they brought -- I don't recall if they said specifically, you know, but they did say that they did speak with him or tried to speak with him about the concerns that they had from other drills and other towns, and they tried to address some of those concerns.

Q. In Interrogatory No. 15 on Exhibit 2, it states: (Reading) Please set forth all facts on which you rely where you allege Chief Pomeroy was aware that you reported him to the Inspector General's office regarding his compensation for educational benefits (end reading), and you answered: (Reading) Town manager Eleanor Beth told me in her office that Pomeroy was aware of the Inspector General office investigator. I wrote of the harassment on the job (end reading).

Where did you write of the harassment on the job?

A. It's in the documents that we produced to you.

Q. Do you know which documents particularly you're referring to?

A. If you want to go off the record, I can get it.

Q. Can you remember --

A. It's in the minutes. I'd have -- you'd have to go through the --

Q. All right, that's fine.

MR. SILVERFINE: We'll go off the record.

(Discussion off the record.)

MR. SILVERFINE: Back on the record.

Mr. Kelley is just showing me a letter that appears to be provided, Exhibit 3 of document production and voluntary disclosure. It's a letter from -- it looks like from Mr. Kelley to Mrs. Beth dated May 10, 2001.

And perhaps -- could I get a copy of this and just mark it so it's clear on the record?

MR. GALLITANO: Sure. Do you want three copies, you think?

MR. SILVERFINE: That would be great. Just so it's clear on the record.

(Pause off the record.)

MR. SILVERFINE: Why don't we mark this as Exhibit 6.

(Whereupon, a letter dated May 10, 2001, was marked as Exhibit No. 6 for the

defendant.)

MR. SILVERFINE: Okay, we'll continue while Joe is making copies.

BY MR. SILVERFINE

Q. On Exhibit 6 this is a letter you wrote to Eleanor Beth, who was then town administrator?

A. She was the town manager.

Q. Town manager. And your complaints had to do with harassment as it related to the discrepancy in pay records as you saw it?

A. What it was, as you can see from the letter --

Q. Yeah.

A. If you want to follow it down with me, we can

--

Q. Yeah, go ahead.

A. Follow this one right here.

Q. Okay.

A. I went to go see her prior to this letter being written, discussing as being a member of the board elected to the position in the fund as well as a town meeting member. There were some serious questions of the personnel bylaw and how it relates in being employed in the police department. There was no provision for Quinn Bill or holiday money or vacation money or overtime,

which was an ongoing practice in it. And having experience in municipal finance and having experience with collective bargaining, employees are paid in three criteria. They're paid pursuant to a personnel bylaw, if they're a member of it; a collective bargaining agreement; or a contractor relationship which they're eligible.

In the case that I was bringing to her attention, which involved town meeting monies and retirement monies and disbursement of funds, there was no mention of Quinn Bill, holiday money, vacation money, and overtime that was being paid on an ongoing basis at the police station in the bylaw that governed the employment of the police captains and the police chief. The bylaw by the Town of Plymouth's adoption, the way they establish their own bylaw, is pursuant to Chapter 41, 108A, which says in a city or town -- in a town by a vote of the town meeting, they can establish a personnel bylaw. Town meeting had never seen these numbers, had never seen these benefits. It never went through the personnel bylaw. And come to find out it was ongoing for over 15 years, and benefits were also being given without authorization of the bylaw to members of the fire department. Those benefits and payroll numbers were

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given to the retirement board, which would then formulate a benefit and calculation pursuant to the individual member's group, age, and salary. Pursuant to the regulations generated by Chapter 32 CMRs specifically indicate as well as the board policy that we will check and back up every number that's in a computation with the governing document. And from the governing document in this case, it would have been the personnel bylaw. To the payroll there was a 30 to 35 percent discrepancy.

At that point I spoke to Mr. Botieri with Mr. Rooney present in his office and explained to him the severity of this issue in the event that something happened to one of them or anybody in that category. I had spoke to board counsel from the retirement board, and he said, "Tom, you have to bring it to the attention of the town in some form or fashion, but get it done" because of the Needham issue where an auditor walked in to the Needham Retirement Board. There were mistakes made by the Needham board for internal tabulations of monies. An auditor ordered the people to pay the money back over -- it was like a 20-year period that this went on for. And the individuals that were out, the members, didn't even realize this happened. It wasn't their mistake.

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Q. Now, did you also file complaints about the fire department to anyone?

A. No, I didn't even know it was going on till we went -- we dug into it deeper.

Q. When was that?

A. When Eleanor Beth looked into or -- when Eleanor Beth finally -- how do I say this? When Eleanor Beth looked into it, she found that this practice was going on in the fire department as well.

Q. Do you remember when that was?

A. That was just around the time that I wrote this letter to her she started.

Q. This was around May 10, 2001?

A. This letter here. After that she started to look into it.

Q. When you complained about the police department, were you complaining about all the police department or just about Chief Pomeroy?

A. I was complaining about the actions of Captain Botieri and Chief Pomeroy.

Q. Anyone else?

A. No.

Q. Besides -- you were kind enough to give me copies of --

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A. We have other e-mails here as well.

Q. The other e-mails in your production are the examples of what you say you wrote about the harassment; is that correct?

A. Right, correct.

Q. And just for the record, why don't we mark these as Exhibit Nos. 7 and 8, which are -- looks like an e-mail from you on September 2, 2000. We'll mark that as Exhibit 7. And then an e-mail of May 8, 2001, from you we'll mark as Exhibit 8.

(Whereupon, e-mails dated September 2, 2000, and May 8, 2001, were marked as Exhibit Nos. 7 and 8 for the defendant.)

BY MR. SILVERFINE

Q. And when you were forwarding, for instance, this e-mail in Exhibit 7, which is your September 2, 2000, e-mail --

A. Which one are you on? I'm on the second one.

Q. This says meeting September 1, 9-month --

A. Okay, I have that one.

Q. Who did you send that to? It says Kelley and Goodwin.

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A. I sent that to -- Dana Goodwin was present at the meeting on the 1st.

Q. Did you send that to Captain Botieri or Chief Pomeroy or anyone else?

A. No, but they have access to -- it's what they call systems manager. They can look into any e-mail at any time.

Q. My question is, did you send this -- did you forward this to Botieri or Pomeroy or to Eleanor Beth?

A. According to that format, no, I didn't. I kept it in my documentation.

Q. And Exhibit 8, which looks like an e-mail from you to -- it looks like yourself, Boyle, and Botieri, did this have to do with the vacation time you were referring to? Is that right? Why don't you take the original.

(Hands to witness.)

A. Yes.

Q. And that's what you were referring to when we discussed a few minutes earlier about your decision with the vacation time?

A. In the e-mail I indicate that I had put in for a month's vacation in June and a month's vacation for July. I had accrued time towards the end of the fiscal year, which would be June, and accrued time starting in

July 1. And I had put in time for that over 60 days prior to it. I believe the date -- what's the date on there?

Q. May 8, 2001.

A. Yeah, right.

Q. Just so I'm clear, besides what we've marked here, you've also indicated in your production would include any and all notices or letters, e-mails you sent as to any harassment that you thought you were undergoing, right?

A. To the best of my knowledge, that I had. What was available.

Q. In other words, there's no other documents other than --

A. Not that I can think of.

Q. -- what you've already produced to us?

A. If I could find -- if I have something, I'd gladly give you a copy of it.

Q. In Interrogatory No. 16 on Exhibit 2, you make a listing of all your treating physicians. Is there anyone else that's not --

A. No.

Q. -- listed there?

A. No. We went over this, believe me, before.

MR. ARMSTRONG: Well, there is. I mean, corrected in the first --

THE WITNESS: I did correct that.

Q. I'm just asking if there's anybody else.

A. No more since then. No more since then.

Q. That's what I'm asking. I just want to make sure that we have all the medical providers. Thank you.

A. We do, right.

Q. I don't know if I asked you this last time, and if I did, forgive me, but I just want to understand.

Did the town have to hire or pay any other police officer to cover your shift when you went to the retirement board meeting?

A. They never did.

Q. To your understanding, how would they cover your sector when you went to a retirement board meeting? To your understanding.

A. Another officer would be assigned my position and have to cover two areas. They would run short on the shift. I believe Captain -- I believe Lieutenant Fahy indicated that as well the other day.

Q. To your knowledge, did that ever create any problems as far as coverage to your understanding?

A. I can tell you that officers would have to

cover two areas, and if it was a long meeting, they'd be pretty upset that they'd have to cover my area. Some of them were sympathetic. They realized that I was doing a volunteer job for their best interest and elected to the position. Some of them really didn't care about anything. They were just upset, and it was difficult sometimes reasoning with them, that I can't help it if they're not going to hire somebody to cover the extra position because I'm out. They are getting a charge back for it.

Q. What's a charge back?

A. They were charging back money from the retirement system, and they indicated to people that they did that for the purposes of coverage, but they never covered me.

Q. Did any of the officers express their, for lack of a better word, anger or --

A. Yes.

Q. -- disappointment to you?

A. Absolutely. All the time.

Q. Which officers?

A. Anybody that was -- I mean, you could go back. They'd have a multiple car accident and then have to go to another one, and they'd be going all the time. They

never covered me, so it put the pressure on all the other people.

Q. Name some of the officers that you recall that

--

A. It was day shift. It would be the day shift. I mean, I can't name specific names. It's almost four years ago or so or better, but it happened all the time over my career there on the time.

Q. Do you know if those complaints went up the chain of command to --

A. I remember Lieutenant Fahy and Captain Skip Budge indicating to people that they never covered me and "They should be covering you." And that was a decision made by the second floor, and they couldn't do anything about it.

Q. You had produced a note to the town after May 25, 2003, relative to your condition -- and I'm sure I'm going to mispronounce this -- cardiomyopathy. Do you remember that?

A. If you have the document, I'll look at it. I don't mean to be --

Q. I have it somewhere.

A. There are numbers of them.

Q. Do you remember if the note indicated that the

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1 condition that you were suffering was caused by the job
2 relative to cardiomyopathy?

3 A. No. If you'd show me a document, I'd be able
4 to specify exactly what you're talking about.

5 Q. But do you have any independent recollection?

6 A. No, I don't. I'd have to see it in front of
7 me. We've got 5-inch stacks of paper here. I'm not
8 trying to be argumentative. I just...

9 Q. All right, I understand.

10 Were you angry that Chief Pomeroy was
11 scrutinizing your absence from work due to the retirement
12 board participation?

13 A. I was annoyed because of -- no one else was
14 scrutinized like that. I was constantly, you know --
15 people at work would be saying, "They're out to get you.
16 They're out to get you." I had other people on the board
17 that turned around and ridiculed and were saying, "Oh,
18 you better get over there quick. They're counting the
19 minutes."

20 I felt the whole thing was unnecessary because
21 they gave us a bill for those hours, and we wouldn't have
22 paid it if I wasn't there. Number two is our minutes of
23 the meeting indicate when the meeting starts and when it
24 ends. That charge back was handled by the administrator

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1 who would be at the meeting. So if they charged me -- if
2 they charged the retirement system for time that I wasn't
3 there or too much or too little, she would make that
4 change or she would object to paying it and bring it to
5 the board's attention. That never happened. I was at
6 every meeting that I was supposed to be at.

7 Q. Were you angry that Captain Botieri --

8 A. I wouldn't justify it as angry. I justify it
9 as harassment in a sense. No, not angry where it's
10 anger, a different meaning of the word.

11 Q. Were you angry at Captain Botieri for
12 scrutinizing your absence from work due to retirement
13 board participation?

14 A. I was annoyed by it. I was embarrassed by it.
15 It was as if I was trying to put something over on them
16 when they had all the checks and balances already there.
17 I believe they did that purposely so that if I was ten
18 minutes late, they would say, "Oh, you must have been
19 doing this. You must have been doing something else" and
20 try to...

21 Q. While you were or have been on the retirement
22 board, has there ever been any allegations against you
23 that you misused funds in your position on the retirement
24 board?

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1 A. Absolutely not.

2 Q. Did you as part of your retirement board work
3 take trips?

4 A. We have conferences that we have to go to and
5 are required to. I run over \$100 million and nine
6 managers.

7 Q. And approximately how many seminars do you
8 attend a year as a retirement board member?

9 A. It varies. It depends on -- it depends if
10 we're looking for a new manager for an international
11 fund. It depends on market conditions. It depends on a
12 number of factors. I mean, if markets are good,
13 everybody's pretty happy just trying to make what you're
14 making. If markets are bad, everybody's scrutinizing
15 things. You know, there are new instruments financially
16 coming out every day. There are new companies.
17 Companies change hands. Individuals change hands. All
18 our contracts on the board are manager specific. They
19 have specific articulate conditions that have to be met
20 to meet a certain asset class. Every one of those
21 conditions and contract is articulate. There's nothing
22 ambiguous. So if there's a change, we bring that manager
23 in. We meet with them, or we go somewhere to meet with
24 them because each one of them have a substantial amount

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1 of money. And one change in an asset class can affect
2 our whole portfolio.

3 Q. During the time period you've been on the
4 retirement board, how many seminars do you attend a year?

5 A. Again, I said we have a state conference one
6 that we attend spring and fall. Sometimes, depending on
7 -- one of the big issues lately has been the GASB 45
8 issue, which in this state the way the legislation is
9 being worked through the statehouse is going to end up
10 the responsibility of the retirement system. I have been
11 following that issue for almost ten years now. It's
12 going to be a major financial undertaking for our
13 retirement system. I have attended seminars indicating
14 the impacts of GASB 45, which is your unfunded medical
15 for retirees, how it's being funded, how it's being
16 handled in different states so that we can be ahead of
17 the curve when this number comes into the -- when we have
18 to declare it, and it's in 2007. There's a lot of work
19 to put that together.

20 Q. What happened to your duties as a police
21 officer when you attended a trip on behalf of the
22 retirement --

23 A. I would notify Mr. Botieri in an e-mail
24 indicating that I'd be on board business and I'd be at a

conference via e-mail.

Q. And would they have to cover for you during those periods?

A. I don't know what they did. I know it from speaking to Kevin and speaking to Lieutenant Budge when I was working. They would say specifically -- and I asked them many a time because I would hear guys saying that at work. I would say to them, "Did they cover me on that day when I was at this conference or here for the day in Boston or doing this, meeting managers?" and they would say, "No, never did." I believe Kevin put that on the record the other day.

Q. Are you still chairman of the retirement board?

A. Yes, I am.

Q. How long have you been chairman?

A. I believe since 2003.

Q. For instance, while you were chairman in 2004, is it fair to say you attended trips for the retirement board to Washington, D.C., Puerto Rico, Anaheim, Hyannis, Danvers, and Florida?

A. I can't remember exactly. Did you get that out of the Boston Globe?

Q. Well, I can look for it, but is that accurate?

A. I attended conferences, yes. I don't know

A. You had a piece of paper you put in front of me.

Q. I thought I had -- I thought I --

A. No, it was in the production of documents, and it was a clear violation of the contract. I don't know how you would have got that information lawfully. Somebody had to keep a secret file and throw it in there after we filed suit.

Q. Okay, but you're not denying that you were disciplined for it, right?

A. I believe it was something that happened in -- oh, it must have been '79 or '80, and I believe I did an extra shift for it.

Q. Now, during the active shooting drill of May 25, 2003, there were several departments present besides yours?

A. No, just Plymouth.

Q. Just your department?

A. Just Plymouth alone.

Q. Along with the state police?

A. State police.

Q. And is it fair to say there were safety EMT officers?

A. I don't know exactly what their certification

exactly what years you're looking at there.

Q. I said 2004.

A. No, I don't think that would have been 2004. It would have been over a number of three years, I believe that was. I believe that was two or three years.

Q. We'll come back to that in a minute.

Last time when we had talked -- and I'm not meaning to jump around. I'm just looking at some notes from talking to you last time. We had discussed this odometer where you had been disciplined for an odometer abuse. Do you recall that?

A. I believe that was over 25 years ago.

Q. I was going to ask you, do you remember what year it was?

A. I don't remember exactly when it was. It was supposed to be by the present contract, the contract I was under -- that information wasn't even supposed to be in my personnel file. It was supposed to be removed.

Q. Was it removed from your file?

A. Never.

Q. It was never removed from your file?

A. No, I don't know how it got there. I don't know how you would have got your hand into that lawfully.

Q. Well, I think you told me about.

was. I never had first aid equipment. They had oxygen. I remember being dragged out and then placed under oxygen, and then the ambulance came.

Q. Do you remember that there were some 12 to 15 EMT or safety officers there?

A. No, there wasn't no 12 or 15 EMTs there.

Q. How many do you say there were?

A. There were only, I believe, six instructors.

Q. Were there separate EMT or safety officers there that you know?

A. No. No, there wasn't.

Q. You're saying there were none?

A. There was not -- it was not a separate unit. If you're saying there was a separate unit standing by, that's not the case.

Q. I'm not asking -- I'm asking, are you aware of any other safety EMT officers present besides --

A. The officers that were there were uniformed -- not uniformed, but they had the -- the overalls of the state police strike team that they wear. It's like a -- how do you want to say? You see it on TV all the time. They have that -- you know, I've seen them all the time. It's like an overall. It's like a suit that they wear. It's like a work suit. You know what I'm trying to say?

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1 How do I explain it other than --

2 MR. GALLITANO: SWAT team.

3 A. It was a SWAT team suit that they all wear, and
4 it's a standard. They were all dressed in that. It's
5 like a one-piece thing that they zip up, and it's heavy
6 material, and maybe it's fireproof. I don't know. I
7 never wore one.

8 Q. In terms of the active shooter drill, that
9 Columbine drill, is it fair to say the department gave
10 you and the members at least a month's notice that the
11 drill was coming up?

12 A. Not at all.

13 Q. How much notice do you say you got?

14 A. I came into work one day, and they said, "You
15 have to do it in a week."

16 Q. Are you saying you got a week's notice?

17 A. We got it on the board. We don't get notices
18 like, "Come and talk to us." We just get a piece of
19 paper stuck on the wall by Botieri, signed by Botieri
20 saying, "You have to go. If you don't go -- you're
21 assigned this day -- you're subject to discipline."
22 That's in the rules and regulations.

23 Q. Are you aware that there were several other
24 officers who were excused for participation for health

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1 -- and I'm going to show you a copy and give a copy to
2 your counsel -- to yourself, Officers Boyle, Budge, and
3 Botieri relating to a surgery that was scheduled for June
4 11, 2001?

5 (Hands to witness.)

6 A. Yeah, I was injured. I had -- this was -- I
7 remember this was Mother's Day. As a matter of fact, the
8 injury report is in the file as well. We arrested an
9 individual for assaulting his wife. And myself and
10 Officer Kennedy went to the house, and we had a struggle
11 with him down a flight of stairs, and I got a hernia in
12 my stomach from it.

13 Q. And when you say surgery, is this the surgery
14 you're referring to in this e-mail?

15 A. Yeah, I went to the hospital that day, and then
16 I spoke to -- I contacted a surgeon, Dr. Zazzarino, who I
17 know, and he did the surgery, which was scheduled for the
18 11th. I was working with a brace around me on my
19 stomach.

20 MR. SILVERFINE: Let's just for the record mark
21 this as Exhibit 9.

22 (Whereupon, the e-mail
23 dated May 30, 2001, was
24 marked as Exhibit No. 9 for

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1 reasons?

2 A. I was never aware of that till today, till I
3 heard him testify.

4 Q. Forgive me. John Abbott, is that his name?

5 A. Right. I never knew that.

6 Q. Dennis Govoni?

7 A. Govoni. Portuguese. You've got to say it like
8 Govoni.

9 Q. Fair enough.

10 Were you aware that he was excused?

11 A. I never knew that till this morning.

12 MR. SILVERFINE: Give me a second here.

13 (Pause.)

14 Q. I'm going to ask you some questions about some
15 documents, some of which I believe you --

16 A. What do we do with -- are these all -- okay,
17 I'm sorry. Go ahead.

18 Q. Just procedurally we take these.

19 A. I thought you were --

20 Q. No, no. That's okay. You're welcome to look
21 at them, but they're just documents that we mark that
22 become part of your deposition exhibits. Your counsel
23 will have copies.

24 Back in May 30 of 2001, did you send an e-mail

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1 the defendant.)

2 BY MR. SILVERFINE

3 Q. And relative to Exhibit 9, second paragraph,
4 you indicated that you would be attending a retirement
5 conference?

6 A. Uh-huh.

7 Q. Do you see that?

8 A. Yeah.

9 Q. Where is that, do you recall?

10 A. That would have been what they call the MACRS
11 conference, Massachusetts Association of Contributory
12 Retirement Systems. That was an advocacy group that
13 represents all 106 retirement systems in the
14 Commonwealth, which I am a member of the executive board
15 from that.

16 Q. Now, did you attend a conference for the
17 retirement board sometime in the fall of 2002?

18 A. I could have.

19 Q. Was there some discussion about filing or
20 preventing people from receiving their retirement
21 benefits if there was a criminal complaint or action
22 against them?

23 A. I couldn't tell you the agendas of those. I'd
24 have to look at the agendas. There are all kinds of

1 decisions.

2 Are you familiar with DALA, Division of
3 Administrative Law Appeals? Are you familiar with that
4 agency? Are you familiar with that? I just want to
5 clarify my question. If I can't --

6 Q. I'm not familiar with it.

7 A. Okay, what it is, it's -- in the administrative
8 process to retirement, okay, there is -- we make a
9 decision as a board. If you're an aggrieved party and
10 you're a member, you can go and you appeal it to the
11 Division of Administrative Law Appeals. It's your
12 administrative relief. Then there is what they call --
13 after DALA there is CRAB, Contributory Appeals Board.
14 And then from that point we go into superior court on a
15 point of law, and then if you have another point of law,
16 you appeal to the appellate courts up the ladder.

17 Every time that we have a conference with
18 MACRS, spring and fall, we have the DALA magistrates
19 come. Okay, we have Chris Connolly (phonetic), who's the
20 chief magistrate, as well as Kimberly Fletcher. They
21 come and they discuss the recent decisions, the
22 precedent-setting decisions with all the boards, and they
23 bring everybody up to speed on how things are
24 interpreted, how new decisions are interpreted from the

1 statute. And it was involving a case where an individual
2 -- he forfeits his pension, and it was over ten years ago
3 the incident happened, but they were able to somehow
4 adjudicate it. And I didn't read it totally, but it
5 basically said there is no statute of limitations for
6 this statute where some people thought it was five years.
7 And the SJC said no, it's wide open.

8 Q. Did you ever yourself bring this to the
9 retirement board that we have to crack down on these
10 kinds of cases where there's been --

11 A. No.

12 Q. -- a criminal complaint or --

13 A. No, no. We have an obligation. For an
14 example, we had some individuals -- excuse me -- I have
15 to go off record for a minute. I can answer that in a
16 minute because it involves two things. There's a
17 conflict.

18 Q. Well, there's a standing question in front of
19 you.

20 A. Well, it's a conflict. I don't want a conflict
21 on a question.

22 Q. Well, if you have a standing question, you're
23 obligated to finish it. Then if you need to talk to
24 counsel --

1 SJC and all those things that affect the administration
2 of the board from a trustee point of view down to your
3 administrators. It's a scheduled conference time. I
4 don't know what the agenda is, to be honest with you.

5 Q. So my question is, sometime in the fall of
6 2002, did you attend some kind of seminar where you heard
7 about denying people their retirement benefits if they
8 had a conviction or a criminal complaint against them?

9 A. I couldn't -- I couldn't qualify the exact date
10 or time. I know those issues have been brought up in the
11 courts. We've just recently done one just last week
12 where they put no statute of limitations on that statute.
13 It was actually ten years old. That was just last week.

14 Q. And that's something if someone commits some
15 on-the-job fraud you can deny them retirement, words to
16 that effect?

17 A. The way that statute's been -- I want to just
18 say interpreted through the SJC in this state the last
19 five years has been very broad-based. It's very -- just
20 the limitations -- just the other day we had a meeting, a
21 week ago, last week, where our counsel, Mike Sacco,
22 brought to the attention a recent SJ decision that was
23 just passed down on the 10th of June that indicated that
24 there's no statute of limitations on that particular

1 A. There was a case before us on a forfeiture
2 issue, okay, that we had to hold a hearing regarding the
3 forfeiture issue, and we found that there was no crime
4 committed that was applicable to the individual's office,
5 and the individual was able to retire.

6 THE WITNESS: Now I need to go off the record,
7 okay?

8 MR. SILVERFINE: Okay.

9 (Short recess was taken.)

10 BY MR. SILVERFINE

11 Q. Right before we broke I had asked you if you
12 had supplied any information. How about do you know a
13 former officer named Furtado?

14 A. Police officer now?

15 Q. Yeah.

16 A. Yeah, Daryl -- Daryl's dead.

17 MR. GALLITANO: Daryl's dead.

18 A. Kevin, Kevin Furtado.

19 Q. Did you ever supply him with any information as
20 to crackdown on retirement benefits as they pertained to
21 applications for criminal complaints or convictions?

22 A. No.

23 Q. And in particular as it related to former town
24 manager Eleanor Beth?

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1 A. No.

2 Q. I'm going to show you another e-mail which I
3 ask you if you recognize.

4 (Hands to witness.)

5 Q. Do you recognize that?

6 A. Yes.

7 Q. And is that an e-mail that you authored?

8 A. Yes, I did.

9 MR. SILVERFINE: Let's mark as Exhibit No. 10.

10 (Whereupon, an e-mail dated

11 July 3, 2003, was marked as

12 Exhibit No. 10 for the

13 defendant.)

14 BY MR. SILVERFINE

15 Q. Showing you what's been marked as Exhibit 10,
16 you sent this on -- it looks like July 3, 2003?

17 (Hands to witness.)

18 A. Yes, that's the day that I used -- I had to use
19 Skippy Budge's -- Lieutenant Budge's computer because
20 mine for some reason wasn't working. My access to it
21 wasn't working.

22 Q. Just help me on this, if you would. In the
23 e-mail itself, it says you requested -- I'm reading about
24 halfway down -- that vacation time that was scheduled on

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1 July 1, 2003, should be changed to sick time. Do you see
2 that in the middle of the second paragraph?

3 A. Right, I had sick time -- I had vacation time
4 starting July 1, and I filed the application, and I put
5 in change that to sick time, correct. I had a sick bank.

6 Q. Up until that time from the point you went out
7 on May 25, 2003, were you using sick time?

8 A. I went in one day, and I was just out of the
9 hospital. I wasn't feeling well, and I said to Captain
10 Botieri or somebody up there -- I remember saying, "Just
11 put me on for vacation right now," and then I left the
12 place.

13 Q. So as of May 25 when you left, you were on
14 vacation time?

15 A. I believe that day there I was -- they charged
16 -- I don't know if they could charge me sick time -- or
17 they didn't pay me. They actually didn't pay me the full
18 day. They only paid me half a day, and then I was off,
19 and then I went in -- I think I spoke to someone on the
20 phone or I did something after. I don't exactly
21 remember.

22 Q. Help me clarify this. When you went out on May
23 25, 2003, were you on sick time or vacation time?

24 A. I was working. I wasn't out. I was working.

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1 Q. No, May 25. I'm assuming you --

2 A. Oh, yeah, two days later.

3 Q. I'm assuming you're sick. You went to the
4 hospital, right? That's your heart, right?

5 A. Oh, yeah, yeah.

6 Q. Right?

7 A. Yes, yes, yes. Okay, I'm getting -- you're
8 right.

9 Q. May 25 you have the Columbine incident, right?

10 A. Uh-huh.

11 Q. When you went out May 25 from there, were you
12 on sick time at that point?

13 A. Sick time, I believe -- I mean, vacation time,
14 I believe.

15 Q. Vacation time?

16 A. Right.

17 Q. Did you ask to be put on vacation time so that
18 nobody would, you know, bother you, so to speak?

19 A. No, when I came home from the hospital, I had
20 only preliminary reports from the doctors from there,
21 which were not anything that -- they were only attending
22 physicians. I had made an appointment with my doctor. I
23 believe I wrote a preliminary report that I gave to the
24 chief via fax from my house and my own computer

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1 indicating to him that I would be seeing my doctor prior
2 to -- I think it was the 21st I saw my doctor of June.
3 And we had the complete file and the results of the
4 cardiac catheterization. At that point I then determined
5 from talking in counsel with my doctor and my personal
6 friends and stuff that I have to put my papers in to
7 retire.

8 Q. Back in June 25, 2003, did you speak to Captain
9 Botieri about this sick time and vacation time?

10 A. All I said to him at that -- I saw him at the
11 town hall, like it says, and I said I just put in my
12 papers that day -- I believe a couple of days before
13 that, and then I wrote this to the chief. I said, "Put
14 me in for sick time because I put my papers in as of this
15 date."

16 Q. Back on June 25, 2003, did you request that
17 your use of sick time be changed to vacation time so you
18 would not be restricted in your activities?

19 A. Not at that point, no. I put in for sick time
20 then because I had additional time and I knew I'd have to
21 retire and I was putting my application in.

22 Q. On June 25, 2003, did you speak to Captain
23 Botieri and state that you wanted to be able to be out
24 and about and be able to drink on your boat without

EXHIBIT A CONTINUED

1 repercussions or allegations of sick leave abuse?
2 A. Absolutely not. Emphatically not.
3 Q. All right, I'm just asking.
4 A. I never questioned -- I never received that
5 letter that you have in there ever till the production of
6 documents.
7 Q. I'm not asking you if -- I'm asking you if you
8 --
9 A. Well, I consider it a personal insult from that
10 department and that individual to say those things after
11 the event that I went through.
12 Q. All right, I'm just asking you if you said
13 something. Do you understand the question?
14 A. I understand the question. I never made that
15 remark to him.
16 Q. That's what I'm asking.
17 A. Okay.
18 Q. And just so I'm clear, you did, however, change
19 in Exhibit 10 your request for vacation time be changed
20 to sick time, and then ultimately you put in your
21 retirement application, right?
22 A. I put my retirement page in on the 25th, as it
23 states, okay, and after when I put my retirement in, it's
24 always been the policy of the town to use accrued sick

1 time for this type of retirement application till the
2 medical panel comes back with the appropriate language,
3 okay, because of a court decision in Brookline that they
4 could wait for a 111F. There have been numerous
5 decisions in the court that say that's perfectly legal
6 for the town but then IOD is retroactively given as a
7 result of the medical panel's decision, and that's been
8 in statute law as well as case law.
9 Q. Let's move on for a moment to the next
10 document, if we can. I'm going to show you another piece
11 of paper which is dated September 9, 2003, and I believe
12 it's cc'd to you.
13 (Hands to witness.)
14 A. Yeah.
15 Q. Do you recognize this?
16 A. Absolutely.
17 Q. And this is a letter that Debra Sullivan, the
18 director of the Town of Plymouth's Contributory
19 Retirement Board, sent to the chief of police?
20 A. Yeah, this is a standard letter sent by the
21 retirement board to the employer department head. It is
22 required -- that letter is required by CMR under Chapter
23 32.
24 MR. SILVERFINE: Let's mark this as Exhibit 11.

1 (Whereupon, the letter
2 dated September 9, 2003,
3 was marked as Exhibit No.
4 11 for the defendant.)
5 MR. GALLITANO: Can we go off the record for a
6 minute?
7 MR. SILVERFINE: Absolutely.
8 (Discussion off the record.)
9 BY MR. SILVERFINE
10 Q. Just showing you Exhibit 11, just help me on
11 this, if you would. The first paragraph says: (Reading)
12 Please be advised that on September 8, 2003, the
13 Commission of the Division of Public Employee Retirement
14 Administration granted accidental disability (end
15 reading).
16 Do you see that?
17 A. Uh-huh.
18 Q. You have to say for the record --
19 A. Oh, yes. I'm sorry.
20 Q. This letter was written on September 9. Was
21 this a particularly quick turnaround in your experience?
22 A. No, no.
23 Q. Why was this letter sent the next day, if you
24 know?

1 A. All I can figure is, number one, when you have
2 a -- I mean, I had a unanimous medical panel in my case.
3 I had three cardiologists indicate that it was -- four
4 questions on the certificate were answered in the
5 affirmative. I was on the job when it happened. There
6 were no questions from the board. The board sent it up
7 to the state. The state looks at it. Their final under
8 -- they're required to look at it under Chapter 32. They
9 make the final determination if there are any
10 inadequacies, address any issues. They can remand it
11 back to the board. They look at it, and then they just
12 say okay.
13 Q. And were you treated any differently than any
14 other retiree to your knowledge?
15 A. No, I precluded myself entirely from the
16 procedure just so that that allegation that you just
17 stated would not be relevant.
18 Q. Let's show you another document which is -- I
19 think you just referenced.
20 MR. SILVERFINE: And it's been previously
21 marked as Exhibit 3 in the Attorney Sacco
22 deposition, but we'll mark it as Exhibit No. 12.
23 (Whereupon, the findings
24 of fact were marked as

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1 Exhibit No. 12 for the
2 defendant.)
3 MR. GALLITANO: Revisiting.
4 MR. SILVERFINE: What's that?
5 THE WITNESS: We already went over this.
6 MR. GALLITANO: I think this is an old ground.
7 THE WITNESS: We went over this.
8 MR. SILVERFINE: I need to just ask a few
9 questions.
10 MR. GALLITANO: Last time we went all through
11 this, though.
12 MR. SILVERFINE: But I'm not going to be that
13 long. You'll forgive me. I'm just trying to be
14 thorough. I'm not looking to bang him up more.
15 THE WITNESS: You're not banging me up, believe
16 me.
17 BY MR. SILVERFINE
18 Q. Showing you what's been marked as Exhibit 11 --
19 MR. GALLITANO: 12.
20 MR. SILVERFINE: Is it 12?
21 MR. GALLITANO: It's 12.
22 MR. SILVERFINE: Sorry, I don't have my glasses
23 on. Thank you.
24 Q. -- Exhibit 12 -- and if I asked you this

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1 already, forgive me, but in Section 5 where it says
2 "Findings of Fact," the first day on July -- paragraph
3 numbered 5 on July 29, 2003, do you see that?
4 (Hands to witness.)
5 A. Yes.
6 Q. To your knowledge, did they review your entire
7 medical and nonmedical history or just as it related to
8 the May 25, 2003, incident?
9 A. As part of the application to retire, which I
10 believe Debra explained that to you yesterday -- the
11 other day -- Debra Sullivan, you are required in the
12 application, which is quite extensive, to name all the
13 doctors that you've had and all your medical conditions
14 prior to this incident on the date of application. Okay,
15 all those facts are given, reviewed by the board, the
16 board's attorney. Then a medical panel gets the exact
17 same stuff. They review it as well as the incident
18 involved and answer the four questions on the
19 certificate, which they did in my case in the
20 affirmative, all four questions.
21 Q. Now, right below that in Section A it says you
22 passed a preemployment physical. Do you see that?
23 A. Yes, I did.
24 Q. Did you have to at any time subsequent to that

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1 take a physical?
2 A. No. You asked that question before.
3 Q. Just bear with me.
4 A. Okay.
5 Q. And was there any evidence of hypertension or
6 heart disease once you began your employment with the
7 Town of Plymouth that you notified the town about?
8 A. None.
9 Q. Put that down.
10 A. I just didn't know if you wanted to read the
11 rest of it. That's all. Part D is pretty pertinent.
12 Q. No, no. These guys are just making fun of me
13 for asking follow-up questions.
14 A. Yeah, yeah.
15 Q. As long as you want me to ask a question, on
16 Exhibit 12, just so I understand -- and just help me on
17 this -- Paragraph 12, when it says the board conducted an
18 evidentiary hearing, is that the same board that you
19 serve on?
20 A. I precluded myself from that. I wasn't a part
21 of that decision.
22 Q. I'm just asking if it was the same board.
23 A. Yes, it was the same board.
24 Q. The same individuals who sit on the board with

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1 you, right?
2 A. Yes, the Town of Plymouth -- as a member of the
3 Town of Plymouth's retirement system, my application must
4 be submitted by statute to the Town of Plymouth
5 Retirement Board. I cannot submit it to anybody else by
6 the town. There are specific regulations in the
7 procedures in the CMRs that indicate if a board member is
8 in front of them for these type of reasons, they preclude
9 themselves from it, and those procedures were followed to
10 the T on advice of counsel.
11 Q. And you're the director of the board? Is that
12 the right term?
13 A. I am the chairman.
14 Q. The chairman, okay. How long had you --
15 A. I wasn't the chairman at this time.
16 Dello Russo was.
17 Q. Back in 2003?
18 A. No, Dello Russo was.
19 Q. What years did you serve as chairman?
20 A. When he left. He left right after that. I
21 think in August, September.
22 Q. And you served as chairman ever since?
23 A. Yes, I have.
24 Q. We had talked a few minutes ago about the

1 on/sick time that you had changed after you had
2 gone out with your heart injury on May 25, 2003. Okay,
3 remember that?

4 A. We talked about it, yes.

5 Q. Did you also send the captain an e-mail on --
6 MR. SILVERFINE: Strike that. Strike that
7 whole line of questioning.

8 Q. Prior to this injury, had you raised the issue
9 during your employ both at the retirement board and a
10 police officer trying to persuade the town to adopt a
11 policy that if an employee used sick time while waiting
12 for the "Heart Law" retirement and the retirement was
13 approved, that the town would retroactively restore the
14 employee's sick time?

15 A. I'm going to explain the statute now. I
16 believe I answered this earlier in the deposition. I can
17 actually point to the page. It's in there.

18 Q. Okay.

19 A. What happens is there was a decision in 1987,
20 Brookline versus -- a Brookline decision. I don't know
21 the exact officer's name. Blair, Blair. Brookline
22 versus Sergeant Blair. In that case what they said is
23 that there was not an automatic triggering of 111F
24 benefits when it comes to issues around the heart bill.

1 the medical panel affirms that it's job related. This
2 was something that we did as five individuals trying to
3 be decent because the town's policy was there were people
4 who would use up accrued sick time and run out. And I
5 had firefighters and police/firefighters come to me and
6 say, "Kelley, I'm losing my house as well as losing my
7 job because I ran out of sick time and I haven't got an
8 answer from the state yet on the medical panels."

9 And the medical panel would come back -- and I
10 haven't had one rejected -- where it was job related, and
11 they retroactively would back pay them all their accrued
12 sick time and monies from the day that they filed
13 application or the date of the event. We were trying to
14 show Mrs. Beth how they were hurting police and
15 firefighters and that simply by adopting a change till
16 there was contrary evidence that you wouldn't be
17 penalizing guys for risking their lives, and they took no
18 interest in it.

19 Q. How long had you attempted to push this?

20 A. I didn't push anything. We just tried to point
21 it out in a matter of exchanging ideas from employer to a
22 retirement board that is faced with the problem that the
23 employer is hurting its own employees, and they just
24 didn't want to recognize what they were doing in their

1 At any point in time in an injury, the
2 department head -- in this case the police chief or the
3 town manager can issue someone 111F benefits. It's at
4 their prerogative. But in a heart application, what
5 happens is this. And specifically there's a procedure.
6 The board -- if you were sent to a panel, there was only
7 so many heart physicians and panels in the state. So we
8 were tracking the time it takes for an individual that
9 has an event, turns around and files an application, and
10 by the time you get all the paperwork together and he
11 gets in front of a medical panel because there might be a
12 backlog or where he lives and all that and getting
13 people, a panel to sit down in scheduling, we found as a
14 board a number of years it was taking 120 days. And what
15 was happening is that individuals were using up accrued
16 benefits and then running out of them. If they didn't
17 have enough sick time to cover 120 days, they would go
18 without a paycheck. Now, some communities in an effort
19 not to financially destroy their police and firefighters
20 have adopted a policy to say if there's an application in
21 front of a board and the person uses up accrued time and
22 they're going to go without a paycheck, they have a
23 certain amount of -- the town will give them 111F till
24 the medical panel comes back with a contrary evidence or

1 practice.

2 Q. How long did you attempt to discuss this with
3 the town?

4 A. Oh, we discussed it a number of times over the
5 years. I don't know how many times.

6 Q. About how many?

7 A. I couldn't put a number on it. Five or six. I
8 had cases.

9 Q. You mean five or six years did you talk about
10 it?

11 A. No, I had cases. And I would show them -- we
12 have a case right now. I had a number of cases tracked
13 by the administrators to say, "This is the date it
14 started, and this is the date we finally adjudicated."
15 On average it was 121 days.

16 Q. Back in September of 2003, do you remember who
17 later counsel for the town was, by any chance?

18 A. I don't know. It could have been Hesse, Toomey
19 & Lehane. It could have been what's his name there.
20 Harold Kowal. I think it might have -- I don't know. I
21 don't know. They use different ones for different
22 people. Then they use Kopelman and Paige for different
23 things too.

24 Q. Were you aware at the time back in September of

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2003 at least when you were putting in for this that labor counsel recommended the town not adopt this policy that you're referring to? Are you aware of that?

A. I was aware that they spoke in on it. And what was kind of interesting because I believe the department head at the time said there was a financial -- it was the end of the world, and the financial director said, "Where is it the end of the world? We're going to retroactively pay these people back anyway."

So I didn't see anything in labor counsel recommending anything.

Q. Let me show you another letter which is dated January 14, 2004. Do you recognize that?

(Hands to witness.)

A. Yes, I do.

Q. And that's a letter to you from Paul Boyle, the president of --

A. That's correct.

Q. -- the Plymouth Brotherhood?

A. Uh-huh.

Q. Dated January 14, 2004?

A. Yes, it is.

MR. SILVERFINE: Let's mark this as Exhibit 13.

(Whereupon, the letter

medical panel. I'm not paying him." We had that evidence. I believe that's in the documents we produced to you as well.

Q. Was there some discussion about the fact that -- with Officer Goodwin that you had never provided the information requested by the chief earlier as to certain medical records --

A. Prior -- excuse me. I'm sorry. Go ahead.

Q. -- that he had asked from you back when you first were submitting this stuff?

A. When we first had it, I had the preliminary stuff, which I believe I showed you before the last time we were speaking. I only had those two things. I mean, part of the injury-on-duty statute clearly says on a specific date and time an individual suffers an injury. Well, let's take the facts in front of us. I was at a mandated training program. 111F says you must be on duty. Well, I was on duty. There's no argument there. If anybody thinks I wasn't, then the chairman's a liar and everybody else is a liar. I collapsed onto Mr. Chandler. He and two other officers dragged me out. I must have been faking then because they dragged me out unconscious. I was taken there to the hospital.

I'm trying to explain something to you.

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dated January 14, 2004, was marked as Exhibit No. 13 for the defendant.)

BY MR. SILVERFINE

Q. Showing you now what's been marked as 13, did you have conversations with Paul Boyle, the Brotherhood president prior to him going in to speak to Chief Pomeroy relative to your injury-on-duty loss compensation?

A. Right, what I do is after -- after I got everything back from the state and it was approved, I had all the documentation from the medical panel, all the documentation from the retirement board. The certificate, which is evidenced from the doctors' panel, unanimous. I gave those to Dana Goodwin, okay, and Rooney, and I asked them to look at these, sit down with the chief and explain -- and show him what I had for evidence. I documented everything that we are required to do for injury-on-duty status and would he reconsider his claim.

Q. And did Mr. Goodwin talk to you after he talked to the chief?

A. I spoke to him on the phone, and he also gave me an e-mail of a conversation that Larry Rooney had with the chief indicating the chief said, "I disagree with the

Q. No, no. I'm just trying to ask you a question. Nobody here is disputing --

A. Let me finish then.

Q. Fine, okay.

MR. GALLITANO: Wait a minute. Let's go off the record.

(Discussion off the record.)

MR. SILVERFINE: Back on the record.

BY MR. SILVERFINE

Q. My question -- and if you don't understand my question, please let me know. Just my question -- and if you don't understand, I'll rephrase it. My question is, when you talked to Dana Goodwin sometime in October of 2003, did he say to you words to the effect "The chief asked for some supplemental records, medical records, which he says he never got"?

A. That's not incorrect (sic). Dana never said that. What I did is that when I got my information and he went into that meeting and Rooney went into that meeting in November in there, he had all the records that you just produced in front of us. He had -- and the certificate from the hospital and the certificate from the medical panel. He had all those records to make his determination.

1 Q. All right, let me just follow up. So Goodwin
2 did not tell you "The chief says you didn't supplement
3 the earlier records," which we indicated through your
4 deposition Exhibits 3 and 4 that he never received
5 supplementation on the medical records you initially
6 provided?

7 A. That's not correct. He did. Larry Rooney gave
8 it to him, and he had those in his possession. I gave
9 them to Larry Rooney prior to his meeting with the chief.

10 Q. But my question was, did Dana Goodwin come back
11 to you --

12 A. He never said that to me, no.

13 Q. -- and say, "The chief says he never got
14 supplementation"?

15 A. No. No, he didn't.

16 Q. Did you yourself outside of Goodwin, Rooney
17 ever send to the chief supplementation of Exhibits 3 and
18 4 that we've already marked and talked about?

19 A. What I did is, when I got my paperwork back, I
20 spoke to Larry Rooney at the station. I gave him a copy
21 of everything and requested him to go up to the chief.
22 The chief also, as the employer, has a complete copy or
23 has access at the town hall to my personnel file, a
24 complete copy of my personnel file, which would have the

1 same documentation that I have that I gave to Larry
2 Rooney. He would have had access to the day I retired,
3 and it was certified because all that information is
4 given to them, hand-delivered up there.

5 Q. Who does that, do you know?

6 A. The administrators, the town -- Mrs. Flynn, Sue
7 Turner when they were there. That letter that you showed
8 me earlier is a notification, and all records are
9 exchanged back and forth from personnel.

10 Q. So let me stop you right here. We talked about
11 this last time, Exhibit 5, which was a letter back in --

12 A. June of 2003.

13 Q. Okay, just bear with me.

14 And he had requested -- "he," meaning the chief
15 -- additional documentation. Is there any other
16 additional documentation that you say you submitted
17 besides Exhibits 3 and 4 other than the application for
18 retirement that was approved in early September? Do you
19 see what I'm saying?

20 A. Okay, these documents here I gave him on a
21 preliminary level. I would not have had the other
22 documents which I gave to him before the request was
23 made, as you see in Exhibit 13, on this date. On this
24 date and on this date, the chief had the entire package,

1 and I gave Larry Rooney in his hand all the documents
2 that I just spoke to. He had those documents in his
3 possession given to him by Larry Rooney on this date and
4 that date.

5 Q. And how do you know that?

6 A. Because they told me they did it.

7 Q. So are you saying --

8 A. Larry Rooney told me he gave the documents to
9 him because I spoke to him on the phone. He called me
10 after the meeting, and he said, "The chief said --" -- I
11 told him, "Did you give him all those documents I gave
12 you?" He said, "Yes, I did," and Larry Rooney told me
13 emphatically the chief said, "I'm not paying him because
14 I disagree with the medical panel."

15 Q. And do you recall when the conversation you had
16 with Rooney which you've just related took place?

17 A. It was probably about 5:30 in the afternoon.

18 Q. What date?

19 A. Oh, I don't remember exactly the date. It was
20 in the fall sometime.

21 Q. The fall of 2003?

22 A. Yes.

23 Q. In the fall of 2003, November 25, 2003, did you
24 come into the police station and have a conversation with

1 Captain Botieri where you gave him this package of
2 material and said, "Give this to the chief if he wants to
3 stay out of superior court"?

4 A. Never did. Never did. That's a bonafide lie,
5 L-I-E.

6 Q. Just bear with me for a second.

7 A. Okay, I agree. Go ahead. I'm bearing with
8 you.

9 Q. Did you say that to anyone else on the police
10 department or the town?

11 A. The only time I went into the station is I
12 spoke to Larry Rooney because he was the assistant
13 prosecutor. I called him. I met him at the station. I
14 went in there at the end of the day. I believe it was
15 like 3:30 for him. He was up from court. I gave him all
16 the documentation because he was scheduled to sit down
17 with the chief and have a meeting and discuss my issue.
18 I never spoke to Captain Botieri.

19 Q. Did you speak to anyone else and say something
20 like that --

21 A. No.

22 Q. -- similar back in November of 2003?

23 A. No, I didn't.

24 Q. Whether it be Chief Pomeroy or anyone else?

DEPOSITION OF THOMAS M. KELLEY - VOLUME II

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1 A. No.

2 Q. A secretary? Anyone?

3 A. (Shakes head.)

4 Q. You just have to answer for the record.

5 A. No, never did.

6 Q. Did you ever in your position as chairman of

7 the retirement board threaten to halt someone's

8 retirement process because of your position on the

9 retirement board?

10 A. Absolutely not.

11 Q. And did that include Captain Botieri?

12 A. Absolutely never made that statement to Captain

13 Botieri.

14 Q. Now, prior to May 25, 2003, had you been

15 suffering from tension and stress and being medically

16 treated for it?

17 A. No, I wasn't.

18 Q. Were you suffering from any physical or

19 emotional distress or stress since December 2002?

20 A. I was on -- like I said, I indicated with the

21 doctors' notes that I gave them in the spring of 2003 --

22 I was under the care for Meniere's disease as well as

23 Lyme disease.

24 Q. Were you under care with a Dr. Moore prior to

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1 December -- May 25, 2003, for stress?

2 A. No.

3 Q. Let me show you another page.

4 MR. SILVERFINE: And let's mark this Exhibit

5 14.

6 (Whereupon, a letter dated

7 January 29, 2004, was

8 marked as Exhibit No. 14

9 for the defendant.)

10 BY MR. SILVERFINE

11 Q. I ask you if you recognize that letter, Mr.

12 Kelley.

13 (Hands to witness.)

14 A. Yes, I remember this letter. Yes.

15 Q. What's been marked as Exhibit 14, why did you

16 request this letter? It says in the first paragraph at

17 your request.

18 A. I just wanted documentation of what had

19 transpired in the -- on the board.

20 Q. Were you already looking to file suit in this

21 action as of January 29, 2004?

22 A. No.

23 Q. So what purpose did you request this letter

24 from Debra Sullivan, the director of the retirement board

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1 of Plymouth?

2 A. I wanted it for my files.

3 Q. And when had you requested this, if you recall?

4 A. I don't remember the date when I requested it.

5 Q. What is your relationship with Debra Sullivan?

6 A. She's been the administrator and works there

7 for the ten years I've been on the board.

8 Q. Were you the boss of Ms. Sullivan under the --

9 A. The board is the boss. The chairman just

10 facilitates some of the day-to-day operations, but all

11 decisions are brought back to the board.

12 Q. You have no direction over Ms. Sullivan?

13 A. No, the board does, the board as a whole.

14 Q. But you as a member of the board also do?

15 A. Yes.

16 Q. And how long have you directed Ms. Sullivan?

17 Is that since you've been on the board itself or since

18 you've been as director -- chairman?

19 A. I've been on the board for ten years, and I've

20 worked with her.

21 Q. For those ten years?

22 A. Yes, right.

23 Q. Let's go to the next letter.

24 MR. SILVERFINE: We'll mark this Exhibit 15.

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1 (Whereupon, a letter dated

2 May 26, 2004, was marked as

3 Exhibit No. 15 for the

4 defendant.)

5 BY MR. SILVERFINE

6 Q. Showing you what's been marked Exhibit 15, do

7 you recognize that?

8 (Hands to witness.)

9 A. I recognize that.

10 Q. Okay, I think this was referred earlier today

11 as a three-page letter, but you'll agree with me it's a

12 two-page letter from Michael Botieri?

13 A. Uh-huh.

14 Q. You have to answer for the record.

15 A. Yes. Yes, yes.

16 Q. And this is dated May 26, 2004?

17 A. Uh-huh, yes.

18 Q. Did you, in fact, have an interaction with

19 Michael Botieri on May 22, 2004?

20 A. May 26. May 26 was the retirement meeting -- I

21 mean, retirement party at the Pinehills.

22 Q. And was that for you?

23 A. That was for myself and two other individuals.

24 Q. All right, tell me in your own words what

1 happened between you and Michael Botieri on -- you said
2 May 26, 2004.

3 A. Well, it's on the date of the letter.

4 Q. I'm sorry. It's --

5 A. Oh, yeah, the 22nd. You're right. Forgive me.
6 You're right. You're right. I was just looking at the
7 letter here. I thought you were saying the letter date,
8 okay.

9 At the end of the night, I was leaving with my
10 wife and Bobby Hicks, and Chuckie Warnock called me over
11 and said -- from a distance he said Captain Botieri
12 wanted to speak to me. So I said in jest, "Oh, Mike
13 wants to speak to little old me." I said, "Okay," and I
14 walked over with that, and he turned around, and he told
15 me to go fuck myself.

16 Q. I'm sorry. Who did?

17 A. Mike Botieri.

18 Q. That's the first thing he said?

19 A. The first thing he said. He turned around and
20 told me to go fuck myself.

21 Q. Okay, what happened next?

22 A. I told him -- I said, "No, Mike, you go fuck
23 yourself." And at that point he had a coffee cup in his
24 hand, and he had a little coffee in it. And he was ready

1 A. Yes, I never discussed it.

2 Q. So just follow along with me, and if the answer
3 is --

4 A. Okay.

5 Q. Whatever it is, just tell me. I'm not assuming
6 anything. I need your answers.

7 A. Okay, I never discussed it.

8 Q. So my question is, whether it be this night or
9 any prior incident, had you had any discussion with Mr.
10 Botieri relative to some opposition in an election you
11 were facing at that time?

12 A. Never.

13 Q. Were you running for retirement board again at
14 that time?

15 A. That was a reelection year. Yes, it was.

16 Q. And when was the election coming up?

17 A. I don't know if it was the end of the month or
18 something like that. Maybe it might have been the end of
19 June or beginning of -- maybe the middle of June
20 sometime.

21 Q. And who was your opposition running for one of
22 the seats, if you remember?

23 A. I believe it was the chief's secretary, Lynn
24 Fortini.

1 to throw it in my face, and Officer Warnock stopped him
2 from doing that. And then I left. My wife, myself, and
3 Bobby Hicks, we left the place.

4 Q. Prior to you say him saying those words to you,
5 had you said or done anything to him?

6 A. Nothing. Never spoke to him the whole night
7 before. I hadn't spoke to him in months.

8 Q. Had he approached you and extended his hand to
9 shake your hand?

10 A. No, he didn't.

11 Q. Did you discuss with him your opposition in an
12 upcoming election?

13 A. No, I didn't. Not that night. I never did.

14 Q. Never did?

15 A. Never did.

16 Q. You never discussed with Mr. Botieri any
17 discussion relative to an election you were undergoing at
18 that point?

19 A. Didn't. I wasn't working. Remember, I was out
20 of the station. I was not working anymore.

21 Q. I understand.

22 A. Well, I wasn't in the station to see him. I
23 was home. That's all.

24 Q. But you live in Plymouth?

1 Q. And what was your relationship with Lynn
2 Fortini?

3 A. I had no problem with Lynn.

4 Q. And she was directly contesting your seat
5 against you?

6 A. No, she was contesting -- there were two seats,
7 and she was contesting one of the two seats.

8 Q. Who else was running for that seat?

9 A. Mr. Manfredi.

10 Q. Mr. Manfredi is the same gentleman you
11 mentioned earlier today?

12 A. Yes, yes.

13 Q. Were you angry that you were facing opposition
14 in the election?

15 A. I wasn't angry. I just -- from what I had
16 heard because I was out of the station, that the chief
17 instructed her to run against me and Dick and that --

18 Q. I'm sorry. Who's Dick?

19 A. Dick Manfredi.

20 Q. Okay.

21 A. And that basically I had heard through the
22 grapevine of different individuals that the chief went
23 around telling people to sign her papers and that she
24 went around telling people, "I'm not running against

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1 those guys. There are five positions."

2 So she misrepresented herself to a lot of
3 people, and a lot of people were angry with her for doing
4 that because they didn't realize that the makeup of the
5 board is not just five members. It's only two elected
6 from the membership. And they were angry that she did
7 that.

8 Q. Did you have discussion with Mr. Botieri
9 relative to his signing Ms. Fortini's nomination papers
10 --

11 A. No, I didn't.

12 Q. Let me just finish.

13 -- for a position on the Plymouth Retirement
14 Board on that night?

15 A. No.

16 Q. At any time did you have discussion with Mr.
17 Botieri about his signing nomination papers?

18 A. No.

19 Q. How about with anyone else that was involved in
20 the Town of Plymouth or the Plymouth Police Department?

21 A. Well, if you mention Viella here in the letter
22 here, I was down the town hall looking to check on my
23 nomination papers for town meeting member at the time to
24 see when I was up. And I ran into Steve, and I said,

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1 "Jesus, I'm glad that you're supporting me" in all of the
2 things that I did for Steve, helping him out with
3 different retirement issues and different issues that he
4 personally needed help with. And he -- you know, he
5 basically said, "The chief told me to sign it," and I
6 said, "Well, you're under one of the -- you're appointed
7 by the chief to the detective division, so if you don't
8 sign it, I guess they throw you out on the street because
9 you're not one of the boys." And I said, "Well, Steve, I
10 thought you had -- I thought you were a little bit more
11 loyal than that to be intimidated to doing something like
12 that," but that's Mr. Viella.

13 Q. Did you swear at Mr. Viella?

14 A. No, I didn't swear at him. I was in a public
15 building, and I left.

16 Q. Did Mr. Viella indicate he was signing Ms.
17 Fortini's nomination papers?

18 A. No, he had already done it.

19 Q. But it's fair to say you were angry and upset
20 at him for --

21 A. I wasn't angry and upset with him. I was
22 disappointed at him and disappointed at his lack of --
23 how would you want to say it? -- credibility and lack of
24 -- you know, in one breath he's throwing the chief under

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1 the bus. In the next breath, he's his best boy, kissing
2 his fanny.

3 Q. Did you ever tell Mr. Viella words to the
4 effect "I hope you don't need the retirement board's help
5 someday"?

6 A. No, Steve has a -- Steve has a real problem of
7 telling the truth or telling, you know, in times --
8 lacking in what they call intestinal fortitude.

9 Q. Did you ever say that to anyone?

10 A. To him?

11 Q. To anyone.

12 A. No, everybody knows that. I didn't say that to
13 him. I just left.

14 Q. Try my -- I'm not trying to trick you.

15 A. No, I know you're not. I know you're not.

16 Q. Just try my question. My question is, did you
17 ever say that to any town employee, police officer, or
18 otherwise --

19 A. Oh, no.

20 Q. -- words to the effect "I hope you don't need
21 the retirement board's --" --

22 A. No, no.

23 Q. -- "--- help someday"?

24 A. I've got a volume of people that I've helped.

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1 MR. GALLITANO: Excuse me. You've got to let
2 him finish the whole question --

3 THE WITNESS: Okay, okay.

4 MR. GALLITANO: -- so that you answer the
5 question completely.

6 THE WITNESS: Okay.

7 MR. SILVERFINE: And also so the stenographer

8 --

9 MR. GALLITANO: Right. I mean, you've cut him
10 off --

11 THE WITNESS: Okay, well, I --

12 MR. GALLITANO: I'm trying to finish --

13 THE WITNESS: I know. I know. I appreciate
14 it. I'm sorry.

15 MR. SILVERFINE: Just off the record for one
16 second.

17 (Discussion off the record.)

18 MR. SILVERFINE: Back on the record.

19 BY MR. SILVERFINE

20 Q. Did Officer Viella have to order you to leave
21 the polling place when he saw you on May 8, 2004?

22 A. No.

23 Q. Did anyone have to order you to leave the
24 polling place on or about May 8, 2004?

1 A. No.
2 Q. Relative to -- I think you mentioned his
3 name earlier -- or somebody did mention his name --
4 Sergeant Michael Peddell, was he your supervisor at one
5 point?
6 A. Sometimes he was the day shift supervisor.
7 Q. At one point in time, did he have to admonish
8 you on some issue?
9 A. Never.
10 Q. Did you ever tell him, "Sergeant Peddell, I
11 hope you never have to come in front of the retirement
12 board" or words to that effect?
13 A. Never did. If I had done anything that this
14 letter indicates, I would have had a reprimand or a
15 suspension in my file.
16 Q. Okay.
17 A. Mike Peddell is in the same position, under the
18 thumb and the appointment of Botieri and Mr. Pomeroy.
19 His job and his duties, where he sits can be changed in a
20 minute.
21 Q. Did you ever make public statements before the
22 Insurance Advisory Committee meeting wherein you stated,
23 "We don't need a woman on the retirement board"?
24 A. Absolutely did not. I believe there's a record

1 and a letter there to Mr. Botieri from the chairman of
2 the Insurance Advisory Committee, Dale Webber, who
3 clearly refutes that argument, who was present at a
4 meeting, and that I believe you were -- that letter was
5 given to Mr. Botieri, and I believe he has a copy of that
6 in his possession. They checked the minutes of the
7 meeting, and the minutes of the meeting, any of those are
8 all taped.
9 Q. Let me get back to the night of May 22, 2004,
10 this retirement ceremony.
11 Did you at all physically touch Mr. Botieri
12 during that night?
13 A. No, I didn't.
14 Q. Did you grab him by his left arm?
15 A. I only spoke to him briefly at the end of the
16 night. Never said a word to him the whole night, never
17 went near him.
18 Q. Did you ever say to him, "I hope you never have
19 a heart attack and come before the retirement board" or
20 words to that effect?
21 A. As I previously stated, I never made that
22 statement.
23 Q. Did you say that to anyone that night or any
24 other night?

1 A. No.
2 Q. Any other police officer that night?
3 A. No.
4 Q. Did you use any profanity as it related to Mr.
5 Botieri -- to Mr. Botieri on the night of May 22, 2004?
6 A. We both exchanged niceties.
7 Q. So that's the words you told us earlier?
8 A. Yes.
9 Q. Anything else that you recall saying to him?
10 A. No.
11 Q. I'm trying to move along here. I'm going to
12 show you another document.
13 MR. SILVERFINE: We'll mark it. I believe
14 these are Plymouth Retirement Board executive
15 session minute meetings, and we'll mark this as
16 Exhibit 16.
17 (Whereupon, executive
18 session minutes were marked
19 as Exhibit No. 16 for the
20 defendant.)
21 MR. GALLITANO: Can we go off the record for a
22 minute?
23 MR. SILVERFINE: Go ahead.
24 (Discussion off the record.)

1 MR. SILVERFINE: The Plymouth Retirement Board
2 executive session -- I'll just identify it by date
3 presently -- May 27, 2004, it's Exhibit 16.
4 Counsel would like to note an objection, and then
5 I'll come back.
6 MR. GALLITANO: As counsel for the deponent,
7 Mr. Kelley, I'm objecting to any questioning
8 regarding these minutes because they are executive
9 session minutes from the retirement board upon which
10 he is a member, and under the terms of his oath of
11 office, he's not supposed to disclose anything
12 that's in executive session. This is an unsigned
13 copy, undated copy of an executive session. There's
14 been no presentation of any vote authorizing the
15 release of these minutes. Therefore, we object to
16 any line of questioning relating thereto, and my
17 client is instructed not to respond to any questions
18 should they be posed.
19 MR. SILVERFINE: For the record, I'm going to
20 reserve on this and both check on whether or not
21 there has been a release, to see if they are
22 released. That's one. And two, based upon the
23 subject matter of this particular case and
24 specifically the relevancy as based upon Mr.

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1 Kelley's claims, I may move to have this -- for the
2 defendants to be able to use this. So I'm going to
3 reserve on this at the end of this deposition, but
4 we'll move on for the moment.

5 All right, let's move on and mark this as the
6 next exhibit, No. 17.

7 (Whereupon, a letter dated
8 June 1, 2004, was marked as
9 Exhibit No. 17 for the
10 defendant.)

11 BY MR. SILVERFINE

12 Q. I'm showing you that. Do you recognize that?
13 (Hands to witness.)

14 A. Yes, I do.

15 Q. Fair to say this was a letter from Debra
16 Sullivan, the director of the retirement board, to
17 Captain Botieri, cc'd to the retirement board of which
18 you were a member back on June 1, 2004?

19 A. Yes, it is.

20 Q. And this related to a complaint that he had
21 filed as it related to you?

22 A. That previous letter that we discussed, Exhibit
23 -- I don't know if it's 13 or -- one of them was.

24 Q. Relative to acknowledging the complaint -- and

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1 we'll get to it in a minute -- what is your understanding
2 of what, if anything, the retirement board once they
3 received the complaint as we've now marked as Exhibit 15?

4 A. The complaint was an issue that was nonboard
5 business. It was a personal exchange of words, and Mr.
6 Botieri took the opportunity to trump it up to make it
7 more than it ever was.

8 Q. Is it fair to say, at least from the
9 allegations that Mr. Botieri made, they may have related
10 to the board because of his allegation that you were
11 going to somehow influence any retirement decision that
12 may be made on his application?

13 A. Well, I look at in the respect of if I -- in
14 Exhibit 13 there you state that he states that I
15 assaulted him -- I believe he said that this morning --
16 and I grabbed him. If I had assaulted a captain of the
17 police department, I can assure you he would have taken
18 out complaints against me. And with that, that's the
19 credibility I give his -- this issue.

20 Q. Let me ask you this. Relative to the
21 retirement board, did they undertake any investigation as
22 to the allegation as Captain Botieri described in Exhibit
23 15?

24 MR. GALLITANO: Objection. I'm also going to

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1 advise my client that considering his position on
2 the board, he should really -- before he answers
3 that, he should have advice of the retirement board
4 counsel as to whether he would be disclosing
5 something, again, that would be part of an executive
6 session.

7 MR. SILVERFINE: Well, I think I hear your
8 objection, but I believe -- I believe there is
9 public information that indicates that -- and we can
10 get to it in a minute.

11 MR. GALLITANO: Well, there may be indications
12 that there was an investigation. What I'm saying is
13 you're asking him what the outcome of that
14 investigation is.

15 MR. SILVERFINE: No, no. I asked him if they
16 undertook an investigation. That's my first
17 question.

18 BY MR. SILVERFINE

19 Q. My first question is, do you know whether or
20 not an investigation was undertaken?

21 A. The issue that you're addressing is an
22 executive session issue, number one. Number two, I have
23 very severe reservations on the fact of how you lawfully
24 got that information. That information is in our

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1 lockbox. There is a procedure for people to get it. And
2 how you got a copy of that and place it in evidence
3 lawfully is that, but I'm not going to speak to an
4 executive session minutes or the surrounding issue other
5 than the fact an executive session was issued on the unit
6 on that issue.

7 MR. GALLITANO: But in answer to his question
8 of whether an investigation took place and you --
9 A. The board looked into the matter.

10 MR. GALLITANO: You can answer the question, is
11 what I'm saying.

12 Q. Did you participate in the matter that was
13 brought before the board?

14 A. I'm not going to speak to executive session.

15 MR. SILVERFINE: Okay, I'm going to reserve on
16 all these because -- I'm reserving on these. Any
17 question relative to what the retirement board did
18 or did not do as to certain allegations that Captain
19 Botieri brought I believe directly related to this
20 lawsuit. So I'm going to reserve on that.

21 MR. GALLITANO: And for the record, I request
22 that you give notice to counsel for the retirement
23 board regarding that so they may be present at any
24 -- if it goes to a motion before the superior court,

1 they can represent their point of view.

2 BY MR. SILVERFINE

3 Q. You're aware, Mr. Kelley, that this allegation
4 as described in Exhibit 15 was at least brought before or
5 addressed to PERAC, are you not, sir?

6 A. I believe there was a written -- a letter
7 written there to PERAC by Mr. Botieri.

8 Q. And you're aware that PERAC then ordered the
9 retirement board which you were participating to do
10 something about it?

11 A. They didn't order us to do anything.

12 Q. What is your memory of what PERAC did in
13 relation to Mr. Botieri's complaint as evidence in
14 Exhibit 15?

15 A. We had already held an executive session and
16 discussed the matter prior, and it was resolved. And
17 PERAC was given a copy of the formal letter that Mr.
18 Botieri wrote.

19 MR. SILVERFINE: Well, let me -- so I'm not
20 misstating something, we'll mark this as the next
21 exhibit.

22 (Whereupon, a letter dated
23 June 3, 2004, was marked as
24 Exhibit No. 18 for the

1 Q. But up until that day when he wrote this

2 letter, you had not investigated this matter and reported
3 back to the board at least as far as PERAC, correct?

4 A. The dates -- when was the executive session?
5 Let's look at the executive session for a minute.

6 MR. GALLITANO: It's not dated.

7 A. It's not dated.

8 MR. GALLITANO: May 27 is the date on the top
9 of this document that's in question.

10 A. The one here, is that it? Oh, yeah, yeah.

11 Okay, it was the next day. We had already addressed it.
12 I volunteered that. I said we need to address something,
13 and we did. And this letter is dated after it.

14 Q. All right. And just --

15 A. And then we responded back to them, which I
16 believe Botieri got. And you have a copy of that.

17 Q. And that's a letter that you referenced earlier
18 today, which was a letter written on July 28, 2004 --

19 A. Yes, I believe --

20 Q. -- signed by three members of the board?

21 A. Right.

22 Q. And cc'd to Michael Botieri?

23 A. Yeah.

24 MR. SILVERFINE: I'm going to just suspend for

1 defendant.)

2 MR. SILVERFINE: Just off the record for one
3 second.

4 (Discussion off the record.)

5 BY MR. SILVERFINE

6 Q. I'm going to show you what's been marked as
7 Exhibit 18. Is it fair to say you've seen this letter
8 before?

9 (Hands to witness.)

10 A. Oh, yeah, yeah.

11 Q. It was addressed to the retirement board of
12 which you were a member back in June of 2004?

13 A. I have seen this letter.

14 Q. Would you agree with me that this letter,
15 Exhibit 18, the second paragraph, Joseph Connarton, the
16 executive director of PERAC says, "We expect the board
17 will immediately investigate the matters discussed in
18 this letter and advise the commission within 30 days"?

19 A. I believe we did that, and I was very
20 forthcoming and told --

21 Q. All right. I'm sorry. I interrupted you.

22 A. I had no problem with it. Put it up there and
23 we fulfilled every obligation that we felt was necessary,
24 the board did.

1 today based on our conversation. We're going to
2 revisit some of these issues, and I'm going to
3 finish hopefully my deposition next time.

4 MR. GALLITANO: That's agreed. That's fine.

5 (Whereupon, at 4:01 p.m. the taking of the
6 deposition was suspended.)

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ACKNOWLEDGMENT OF DEPONENTUNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. 1:05-cv-10596-NMG

I, Thomas M. Kelley, do hereby acknowledge that I have read and examined pages 1 through 92, inclusive, of the transcript of my deposition, as taken in Plymouth, Massachusetts, on Wednesday, June 21, 2006, and that:

_____ the same is a true, correct, and complete transcription of the answers given by me to the questions therein recorded.

_____ except for the changes noted in the attached errata sheet, the same is a true, correct, and complete transcription of the answers given by me to the questions therein recorded.

Signature

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C E R T I F I C A T E

PLYMOUTH, SS

I, Linda M. Corcoran, a Court Reporter and Notary Public, in and for the Commonwealth of Massachusetts, do hereby certify that:

Thomas M. Kelley, having been satisfactorily identified and having been duly sworn by me to testify upon his oath, did so testify, and that this transcript is a full, true, and accurate record to the best of my knowledge, skill, and ability of the testimony taken at the Law Offices of Joseph R. Gallitano & Associates, 34 Main Street Extension, Suite 202, Plymouth, Massachusetts, on Wednesday, June 21, 2006, commencing at 2:07 p.m.

I further certify that I am a disinterested person to the action in which this deposition is taken.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 31st day of July, 2006.

Linda M. Corcoran - Court Reporter
My commission expires:
October 6, 2006

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ERRATA SHEET

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EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THOMAS M. KELLEY,
Plaintiff,

v.

Civil Action No. 05-10596-NMG

TOWN OF PLYMOUTH, et al
Defendants.

CONFIRMATORY AFFIDAVIT OF DENNIS M. GOVONI

I, Dennis M. Govoni, being first duly sworn, state that I am a witness in the above-entitled action, I am over the age of 18 and competent to testify. Further, I have read my Affidavit and know the contents thereof, and the same is true to my own knowledge and belief.

1. My names is Dennis M. Govoni and I reside at 9 Chestnut Street, Kingston, MA 02364.
2. I am a retired Plymouth Police Officer as of April 28, 2004.
3. I was an acting patrolman on the Plymouth Police force in May through August, 2003.
4. During said period I was ordered to participate in so-called Columbine Shooting Drill in Plymouth conducted by a State Police training force.
5. At the time I was experiencing symptoms indicative of a potential heart problem.
6. After May 25, 2003, when I learned of Officer Kelley's heart incident during the aforesaid drill conducted on that day I no longer believed it was safe for me to

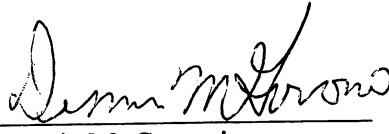
participate in the Columbine Shooting training for which I was scheduled for at a later date.

7. It was after Officer Kelley's injury that I refused to participate in said drill.

8. I was required then to produce a medical statement from my general practitioner physician concerning my health and that I was only fit for desk duty.

9. I was then excused from participating in said drill.

Subscribed and sworn to under the pains and penalties of perjury this 10TH day of November, 2007.


Dennis M. Govoni